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United States

October Term, 1995

THE PEOPLE OF THE STATE OF CALIFORNIA AND THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA,

Petitioners,

VS.

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI VOLUME I (Pages A1-A175)

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CALIFORNIA V. FCC, 75 F.3D 1350 (9TH CIR. 1996)

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE PEOPLE OF THE STATE OF CALIFORNIA; PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA; *Petitioners,* PENNSYLVANIA PUBLIC UTILITY COMMISSION ("PAPUC"); SOUTHERN CALIFORNIA COALITION ON BATTERED WOMEN; TOWARD UTILITY RATE NORMALIZATION ("TURN"); CONSUMER FEDERATION OF AMERICA; CONSUMER ACTION; THE NATIONAL ASSOCIATION OF SOCIAL WORKERS ("NASW"); THE CALIFORNIA ALLIANCE AGAINST DOMESTIC VIOLENCE; THE FAMILY VIOLENCE PREVENTION FUND; *Petitioners-Intervenors,* v. FEDERAL COMMUNICATIONS COMMISSION; UNITED STATES OF AMERICA; *Respondents,* US WEST COMMUNICATIONS; MCI TELECOMMUNICATIONS CORPORATION; AD HOC TELECOMMUNICATIONS USERS COMMITTEE ("COMMITEE"); AT&T CORPORATION; THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS; NATIONAL ASSOCIATION OF CONSUMER ADVOCATES (NASUCA), AMERITECH OPERATING COMPANIES; SOUTHWESTERN	No. 94-70197 FCC No. 94-59 OPINION

BELL TELEPHONE COMPANY; PACIFIC BELL; UNITED STATES TELEPHONE ASSOCIATION (USTA); BELLSOUTH CORPORATION; *Respondents-Intervenors.* AND CONSOLIDATED CASES.	)	No. 95-70470 No. 95-70519 No. 95-70571

Petitions to Review Orders
of the Federal Communications Commission

Argued and Submitted
November 16, 1995 – San Francisco, California

Filed January 31, 1996

Before: Mary M. Schroeder and Arthur L. Alarcon, Circuit Judges, and Robert H. Whaley,* District Judge.

Opinion by Judge Alarcon

SUMMARY

Government Law/Communications

The court of appeals denied petitions for review of orders of the Federal Communications Commission (FCC). The court held that an FCC rule that subscribers who fail to choose the method to prevent disclosure of their nonpublished telephone numbers, when Caller ID service becomes effective, must be served with a "per call blocking" system, does not arbitrarily and capriciously preempt a Public Utilities Commission of the State of California (CPUC) rule that emergency service organizations and subscribers with nonpublished numbers who fail

* Honorable Robert H. Whaley, United States District Judge, for the Eastern District of Washington, sitting by designation.

to communicate their choice between per call blocking and "per line blocking" be served with a system that blocks disclosure on all calls. The court also held that the FCC's preemption order did not violate the federal constitution. Finally, the court further held that the FCC's "free passage rule," which requires telephone carriers using Common Channel Signalling System 7 (SS7) to deliver calling party numbers (CPN) without charge to other telephone carriers, is not arbitrary and capricious.

Provision of telephone services is divided between local exchange carriers (LECs) and long distance carriers (IXCs). Many IXCs have invested in SS7 by installing it in their own networks and by establishing SS7 interconnections with LECs to allow passage of CPN.

The FCC undertook efforts to promote the availability of interstate Caller ID, a service that permits a customer who receives a call to see the number of the person who placed the call unless the calling party blocks disclosure of the number. CPN is transmitted by means of SS7.

Petitioner the Public Utilities Commission of the State of California (CPUC) authorized California LECs to offer intrastate Caller ID service. The decision of the CPUC provides that each subscriber shall have a choice between "per call blocking" and "per line blocking" without cost. Per call blocking requires the customer to dial *67 each time a call is made to protect his or her privacy. Per line blocking is a system that blocks disclosure on all calls unless the calling party dials *82. The CPUC determined that emergency service organizations and subscribers who pay monthly charges for nonpublished telephone numbers, and who do not communicate their choice, will receive per line blocking service.

Other subscribers who do not make a choice will receive per call blocking service.

The FCC recognized that some IXCs were building the SS7 facilities needed to transmit CPN and other services on interstate calls. The FCC determined that it would be in the public interest to adopt rules to encourage and regulate the development of SS7 services. The FCC released a First Report and Order (First R&O), in which the FCC concluded that interstate passage of CPN could bring a variety of benefits to consumers and promote technological innovation that would foster economic efficiency. The FCC determined that inconsistent state regulatory schemes for CPN blocking options and uncertainty regarding compensation for the interstate transmission of CPN created investor uncertainty and customer confusion about CPN. The FCC determined that making per call blocking available on all interstate calls best accommodates the interests of calling and called parties. The First R&O provided for preemption of state regulation of Caller ID that prohibited per call blocking for interstate calls. The FCC also proposed adoption of a rule requiring carriers to transport CPN to other carriers free of charge; the agency found that the transmission of CPN imposed only *de minimis* additional costs on IXCs who had already invested in SS7.

The CPUC, AT&T Corp., and Competitive Telecommunications Association (CompTel) filed separate petitions for reconsideration of the First R&O. The FCC issued a reconsideration order (Second R&O). The FCC narrowed its preemption of state public utilities blocking regulations by permitting subscribers to choose per line blocking or per call blocking on interstate calls, provided that all carriers were required to adopt a uniform method for overriding blocking on any particular call. The FCC also preempted the CPUC's

regulation that nonpublished subscribers and emergency service organizations that do not make a selection would be assigned per line blocking. The FCC stated that California's default policy thwarted and impeded federal goals for interstate CPN-based services. The FCC also concluded that carriers should not be permitted to charge other carriers for transmission of CPN.

The CPUC filed two petitions seeking review of the FCC's decision denying reconsideration of the FCC's rule that subscribers who fail to choose the method to prevent disclosure of their nonpublished telephone numbers, when Caller ID service becomes effective, must be served with per call blocking to protect their privacy. The CPUC argued that the rule violates federal constitutional rights, and arbitrarily and capriciously preempts the CPUC rule that emergency service organizations and subscribers with nonpublished numbers who fail to communicate their choice between per call blocking and per line blocking be served with a system that blocks disclosure on all calls. AT&T and CompTel filed separate petitions, seeking review of the denial of their petitions for reconsideration of the FCC's decision requiring telephone carriers using SS7 to deliver CPN without charge to other telephone carriers (the free passage rule).

[1] The fact that the FCC narrowed its preemption in the Second R&O did not prevent it from preempting CPUC's blocking default plan. **[2]** The FCC's explanation that the CPUC's per line blocking default rule would impeded development of CPN-based services was rational. **[3]** Although the Communications Act of 1934 separates the regulation of interstate and intrastate telecommunications and denies to the FCC any authority over intrastate communications, **[4]** a

Supreme Court decision recognized an "impossibility" exception to the limitation on the FCC's authority. [5] The FCC set forth its justification for preempting the CPUC's per line blocking default for intrastate calls in the Second R&O. [6] The FCC's preemption order met the requirement that a preemption rule should be narrowly tailored to fit federal policies. The FCC preemption regulation was not arbitrary and capricious, and preemption of CPUC's default fit within the "impossibility exception."

[7] In regard to CPUC's federal constitutional challenges to the FCC's Caller ID rule, a phone number is not among the select privacy interests protected by a federal constitutional right to privacy. [8] The preemption rule did not violate any cognizable privacy interest. [9] In addition, exposure of a telephone number does not violate the First Amendment right not to speak, [10] and the FCC's preemption order did not violate the First Amendment right to speak anonymously.

[11] The FCC's free passage rule was not arbitrary and capricious. [12] And, because the FCC did not impermissibly engage in rate making without following the required procedures, AT&T and CompTel's argument that the FCC violated Communications Act § 205 was rejected.

COUNSEL

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OPINION

ALARCON, Circuit Judge:

California's Public Utilities Commission ("CPUC") has filed two petitions seeking review of the Federal Communications Commission's ("FCC") decision denying reconsideration of the FCC's rule that subscribers who fail to choose the method to prevent disclosure of their nonpublished[1] telephone numbers, when Caller ID service becomes effective, must be served with a system that requires the customer to dial *67 each time a call is made ("per call blocking") to protect his or

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[1] Nonpublished refers to both unlisted telephone numbers (which are available from directory assistance) and unpublished telephone numbers (which are both unlisted and not available from directory assistance).

her privacy. CPUC argues that this rule violates federal constitutional rights, and arbitrarily and capriciously preempts the CPUC rule that emergency service organizations and subscribers with nonpublished numbers, who fail to communicate their choice ("default")[2] between per call blocking and a system that blocks disclosure on all calls unless the calling party dials *82 ("per line blocking"), be served with a system that blocks disclosure on all calls.

AT&T Corporation ("AT&T") and Competitive Telecommunications Association ("CompTel") have filed separate petitions in which they seek review of the denial of their petitions for reconsideration of the FCC's decision requiring telephone carriers using Common Channel Signalling System 7 ("SS7")[3]. to deliver calling party numbers ("CPN") without charge (the "free passage" rule) to other telephone carriers.

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[2] Default is a term of art used by the parties in this case to refer to the assignment of a blocking system to a subscriber who does not respond to a request that a choice be made between per line blocking and per call blocking.

[3] Common Channel Signalling System 7 refers to a technological advancement in the method that telephone calls are set up (*i.e.*, how a connection is established). Prior to the development of SS7 signalling systems, calls were set up over the communications channels that also carried the conversations once connections were completed. This is referred to as "in-band signalling," in that the call set up and related signalling were performed in the same frequency bands as the ultimate calls and were an expensive prelude to those calls. The SS7 system permits "out of band" signalling to occur, *i.e.*, it allows calls to be set up over a separate set of systems and switches that do not tie up communications channels. SS7 permits telephone companies to carry and transmit CPN, and to offer a host of other new services that include: pay-per-view television, order entry verification, voice message storage, secure computer access, customized customer service, business fraud reduction, call routing, and emergency dispatch.

AT&T and CompTel filed their petitions in the District of Columbia Circuit. The petitions for review filed by CPUC, AT&T, and CompTel were consolidated by the Judicial Panel on Multidistrict Litigation.[4]

We conclude that the FCC did not act arbitrarily and capriciously in ruling (1) that the preemption of the CPUC's rule was necessary to prevent negation of a valid FCC regulatory goal, and (2) that the imposition of the per call blocking option on subscribers with nonpublished numbers and emergency service organizations, who do not make a choice between Caller ID blocking systems, does not violate any federal constitutional right. We uphold the FCC's free passage rule because the record shows that the FCC examined the relevant evidence and adequately explained all aspects of its decision.

We have divided the opinion into two parts. In Part One, we review CPUC's challenge to the FCC's preemption of the

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[4] Pacific Bell and GTE California have intervened and submitted a brief in support of the FCC responding to CPUC's petition. Toward Utility Rate Normalization ("TURN"), Consumer Action ("CA"), Consumer Federation of America ("CFA"), Southern California Coalition on Battered Women ("SCCBW"), the National Association of Regulatory Utility Commissioners ("NARUC"), the National Association of Social Workers ("NASW"), Pennsylvania Public Utility Commission ("PPUC"), and California Alliance Against Domestic Violence & the Family Violence Prevention Fund ("CAADC") have intervened and submitted a joint brief in support of CPUC. Ameritech Operating Companies, Bell Atlantic Telephone Companies, BellSouth Telecommunications, Inc., GTE Service Corporation, National Telephone Cooperative Association, Southwestern Bell Telephone Company, United States Telephone Association, and U S West Communications, Inc. (collectively "Network Intervenors") have intervened and submitted a brief in support of the FCC and in response to AT&T's and CompTel's petition.

type of Caller ID blocking service that must be offered to emergency service organizations and subscribers with non-published telephone numbers who do not make an election. In Part Two, we consider the claims of AT&T and CompTel that the free passage rule violates the requirements of the Administrative Procedures Act ("APA"), and is arbitrary and capricious. To set the stage for our discussion of these discrete questions, we will summarize the historical facts and procedural steps that preceded this current legal contest.

The provision of telephone services is divided between local exchange carriers ("LECs") and long distance carriers ("IXCs"). LECs generally provide all telephone services within their authorized local calling areas, and the vast majority of intrastate toll calls. The local carriers also provide access to IXCs. Virtually every long distance call originates with one LEC and terminates with another LEC. The IXCs run lines between local calling areas. They pay access fees to LECs to originate and to terminate long distance calls. IXCs earn revenue only when the called party accepts a long distance call. IXCs pay the LECs access fees for each long distance call, however, whether or not it is completed.

With the exception of toll free calls to 800 and 900 numbers, the calling party selects its long distance carrier. In contrast to LECs, however, an IXC does not have a business relationship with residential or commercial customers who *receive* long distance calls.

Like the LECs, AT&T and many other IXCs have invested in SS7, both by installing it in their own networks, and by establishing SS7 interconnections with LECs to allow

the passage of CPN. AT&T reported that its capital investment in SS7 exceeds one billion dollars. Other IXCs, such as CompTel, have not yet installed SS7 systems.

The consolidated cases before this court involve challenges to the FCC's efforts to promote the availability of interstate Caller ID.[5] Caller ID is a service that permits a customer who receives a call to see the number of the person who placed the call unless the calling party blocks disclosure of the number.[6]

CPN is transmitted by means of SS7, a relatively new technology. Caller ID service is presently available only on local calls carried by LECs over their SS7 systems. Today, LECs in 47 states and the District of Columbia offer some form of Caller ID for intrastate calls. On June 17, 1992, the CPUC authorized California LECs to offer intrastate Caller ID service. The CPUC decision provides that each subscriber shall have a choice between per call and per line blocking without cost. The CPUC's ruling requires telephone companies to conduct a vigorous notice and education program regarding Caller ID and the available blocking options to protect a subscriber's privacy.[7] The CPUC also determined that emergency service organizations and subscribers who pay

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[5] Under the Communications Act of 1934, state utilities, such as the CPUC, have authority over intrastate common carrier communications by wire or radio. The FCC has authority over interstate common carrier communications by wire or radio. 47 U.S.C. §§ 152(a) & 152(b).

[6] The calling party's number appears on a device that is attached to, or incorporated into, the called party's telephone.

[7] The customer notice and education program will include: the establishment of a 24-hour toll free number for consumer information, a consumer education campaign, and ordering inserts to accompany telephone bills.

monthly charges for nonpublished telephone numbers and do not communicate their choice, will receive per line blocking service. All other subscribers who do not make a choice will receive per call blocking service.

Although the CPUC authorized the introduction of Caller ID for intrastate calls in 1992, LECs in California, including Pacific Bell and GTE California, have not yet offered intrastate Caller ID service. Instead, they petitioned the CPUC for reconsideration of its blocking default rule. They argued that the CPUC should order LECs to provide per call blocking for all subscribers who do not communicate their choice.

In 1991, the FCC recognized that some IXCs were building the SS7 facilities needed to transmit CPN and other services on interstate calls. The FCC concluded that it would be in the public interest to adopt rules to encourage and to regulate the development of SS7 services. The FCC initiated the rulemaking process that led to the order currently under review on September 26, 1991.[8] The FCC's Notice of Proposed Rulemaking ("NPRM") solicited comments on a tentative federal regulatory model for interstate CPN services. The FCC's proposed goals for this model included promoting the availability and development of new consumer services, balancing the relevant privacy interests of the calling party and the called party,[9] and ensuring end-to-end passage of the CPN by IXCs participating in interstate calls. Over 100 comments were received by the FCC.

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[8] *Rules and Policies Regarding Calling Number Identification – Caller ID*, Notice of Proposed Rulemaking, 6 FCC Rcd 6752 (1991).

[9] Calling party refers to the person initiating a call. Called party refers to the person receiving the call.

Following the comment period, the FCC released its First Report and Order ("First R&O") on March 6, 1994. In the First R&O, the FCC concluded that interstate passage of CPN could bring a variety of benefits to consumers and promote technological innovation that would foster economic efficiency. The FCC determined that two issues created investor uncertainty and customer confusion about CPN: (1) inconsistent state regulatory schemes for CPN blocking options;[10] and (2) uncertainty regarding compensation for the interstate transmission of CPN.

The FCC found that the offering of Caller ID services did not violate the privacy of the calling party. The FCC determined that making per call blocking available on all interstate calls best accommodated the interests of the calling party and the called party. On that basis, the First R&O provided for the preemption of state regulation of Caller ID that prohibited per call blocking for interstate calls. The FCC also rejected per line blocking as an undue burden on the called party.

In its First R&O, the FCC also proposed the adoption of a rule requiring carriers to transport CPN to other carriers free of charge. The FCC reasoned that the unimpeded flow of the calling party's number throughout the network ensured to subscribers the broadest choices. The FCC also found that free passage of CPN eliminated costs, that would have

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[10] Blocking options refer to the methods available to a calling party to prevent the disclosure of his or her telephone number. When a telephone number is blocked, the transmission of the telephone call is accompanied by a privacy indicator that prevents the disclosure of the calling party's number to the called party. The same SS7 protocol, and the same facilities are used to pass CPN to the called party, whether the call is interstate or intrastate. Thus, default per line blocking would affect both intrastate and interstate calls.

occurred in negotiations regarding cost allocation between the carriers, that could delay or impede development of CPN. Finally, the FCC found that the transmission of CPN imposed only *de minimis* additional costs on IXCs who had already invested in SS7.

CPUC, AT&T and CompTel filed separate petitions for reconsideration of the First R&O. The FCC stayed the rule's effective date pending reconsideration of its proposed rules.

On May 5, 1995, the FCC issued a reconsideration order ("Second R&O"). The FCC narrowed its preemption of state public utilities blocking regulations by permitting subscribers to choose per line blocking or per call blocking on interstate calls, provided that all carriers were required to adopt a uniform method of overriding blocking on any particular call. The FCC determined that a dual blocking scheme for interstate and intrastate calls was infeasible.[11] The FCC also preempted the CPUC's regulation that nonpublished subscribers and emergency service organizations that do not make a selection would be assigned per line blocking.

In the Second R&O, the FCC adhered to its finding that the incremental cost of transmitting CPN for long distance carriers who have already installed the SS7 system was *de minimis* or "essentially zero." Accordingly, the FCC concluded that carriers should not be permitted to charge other carriers for the transmission of CPN. The FCC noted that the IXCs were already recovering their costs for the SS7 upgrade through charges to their long distance customers. The FCC

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[11] In its opening brief, CPUC did not challenge the FCC's finding that it was infeasible to offer separate blocking schemes for interstate and intrastate calls, therefore we need not discuss this factor.

concluded that the introduction of SS7 systems by IXCs constituted a general network upgrade with costs that should be borne by the system's general users.

PART ONE

THE PREEMPTION ORDER

I. *The FCC's Preemption Order Is Not Arbitrary And Capricious*

The CPUC challenges as arbitrary and capricious the FCC's order preempting the CPUC's rule that nonpublished subscribers, who fail to express their choice of a system to prevent disclosure of their telephone number to a called party, must receive per line blocking service. The CPUC argues that the FCC's preemption order is invalid because it has failed to demonstrate that CPUC's rule negates a valid FCC goal.

We review a federal agency's action to determine whether it was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. . . . " 18 U.S.C. § 706(2)(A). We must also decide whether the agency's decision was "contrary to constitutional right, power, privilege or immunity. . . . " 5 U.S.C. § 706(2)(B). In carrying out our responsibility, we must determine whether the agency's decision was "a reasonable exercise of its discretion, based on consideration of relevant factors, and supported by the record." *California v. FCC*, 905 F.2d 1217, 1230 (9th Cir. 1990) ("California I"). The Supreme Court has instructed that although "this record inquiry into the facts is to be searching and careful, the ultimate standard of review is a narrow one. The court is not empowered to substitute its judgment for that of the agency." *Citizens to Preserve Overton Park, Inc. v.*

Volpe, 401 U.S. 402, 416 (1971). An agency acts arbitrarily and capriciously if it "entirely failed to consider an important aspect of the problem" or "offered an explanation that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Assn. v. State Farm Mutual Auto Ins. Co.*, 463 U.S. 29, 43-44 (1983). A reviewing court may overturn agency rulemaking decisions only where a "clear error of judgment" has occurred. *Bowman Transp., Inc. v. Arkansas-Best Freight System, Inc.*, 419 U.S. 281, 285 (1974).

CPUC argues that the FCC's preemption decision " 'fail[s] to consider an important aspect of the problem' " and "offer[s] an explanation for its decision that runs counter to the evidence before the agency." *Motor Vehicle Mfrs. Assn.*, 463 U.S. at 43-44 (citation omitted). CPUC asserts that preemption of its per line blocking default rule, while allowing states to offer per line blocking for subscribers who request it, is irrational. CPUC maintains that having permitted the states to determine which blocking system will be available to its citizens, the FCC has no legitimate interest in dictating the blocking system a state assigns to nonpublished subscribers and emergency service organizations that do not communicate their choice.

[1] The FCC responds that the fact that it narrowed its preemption in the Second R&O, to accommodate both per line and per call state blocking systems, does not prevent it from preempting CPUC's blocking default plan. We agree. We have previously held that the FCC does not relinquish its preemption power simply because it has decided to exercise it narrowly, and to defer to the states in some area of common interest. *California v. FCC*, 39 F.3d 919, 931-933 (9th Cir. 1994), *cert. denied*, 115 S. Ct. 1427 (1995) ("California III").

[2] The FCC's explanation of its decision that the CPUC's per line blocking default rule would impede the development of CPN based services is rational. The FCC is empowered "to make reasonable assumptions about economic impact based on the evidence currently available." *North Carolina Utilities Commission v. FCC*, 552 F.2d 1036, 1056 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977). The FCC can, in determining what regulations will best support the development of CPN for interstate calls, make a "predictive judgment" that its regulations will better serve that goal than would CPUC's default plan. *American Postal Workers Union v. United States Postal Service*, 891 F.2d 304, 314 (D.C. Cir. 1989) (noting that "agencies are entitled to engage in predictive judgments of the future public interest and that 'complete factual support' is not required where such predictions 'necessarily involve[ ] deductions based on the expert knowledge of the agency' ") (citation omitted), *rev'd on other grounds*, 498 U.S. 517 (1991). *See also Bowman Transp., Inc.*, 419 U.S. at 293-294 (stating "[i]f the Commission has 'drawn out and crystallized these competing interests [and] attempted to judge them with as much delicacy as the prospective nature of the inquiry permits,' . . . we can require no more.").

The Communications Act of 1934, 47 U.S.C. §§ 151-613, separates the regulation of interstate and intrastate telecommunications. Congress determined that the FCC should "make available, so far as possible, to all the people of the United States a rapid, efficient, nationwide, and worldwide wire and radio communication service with adequate facilities at reasonable charges. . . . " 47 U.S.C. § 151. The FCC is also charged with the mission of encouraging "the provision of new technologies and services to the public." 47 U.S.C. § 157. The Act expressly denies to the FCC any authority

over intrastate communications. Section 2(b)(1) provides in pertinent part:

> [N]othing in this chapter shall be construed to apply or to give the Commission jurisdiction with respect to (1) charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communication service by wire or radio of any carrier, . . .

47 U.S.C. § 152(b)(1).

The Supreme Court's decision in *Louisiana Public Service Commission v. FCC*, 476 U.S. 355, 375, n. 4 (1986), recognized an "impossibility" exception to the limitation on the FCC's authority set forth in section 2(b)(1). The Court held that the FCC may preempt a state regulation where it is "not possible to separate the interstate and intrastate components of the asserted FCC regulation." *Id.* The FCC may regulate "when the state's exercise of that authority negates the exercise by the FCC of its own lawful authority over interstate communication." *California* I, 905 F.2d at 1243. We have concluded, however, that the impossibility exception is narrow. *Id.*

> The FCC must demonstrate that the state regulation would negate valid FCC regulatory goals. *Id.* [T]he FCC bears the burden of justifying its *entire* preemption order by demonstrating that the order is narrowly tailored to preempt *only* such state regulations as would negate valid FCC regulatory goals. (emphasis in the original).

California I, 905 F.2d at 1243.

In its First R&O, the FCC stated that its goal in promoting CPN based services was to develop and make available

new consumer services and choices. The most striking example of the benefits of a CPN service is that battered women or abused children have been rescued when they were unable to complete their plea for help or give their address because the emergency service dispatcher had received the calling party's number.

The FCC set forth its justification for preempting the CPUC's per line blocking default for intrastate calls in the Second R&O:

> 86. California's default policy thwarts and impedes our federal goals for interstate CPN-based services. Initially, to the extent California's default policy prevents the deployment of calling party number identification services in California, it deprives the residents of, and callers to, that state of access to the benefits we have determined in this proceeding are associated with such interstate services. It does this in a number of ways. First, unless carriers in California enable the lines of residents in that state to receive interstate CPN, these residents will be unable to realize the efficiencies and new service opportunities we believe will flow from interstate CPN-based services. Second, callers to California from other states also would be denied the benefits of these new services and opportunities when they made calls to businesses or residents in California. For example, callers to businesses would be subject to longer order processing times, longer credit verification processes, and more cumbersome call routing techniques. Similarly, absent number identification services, callers to residents are likely to have fewer completed calls than if they are calling residents who are able to recognize the calling party's number, and want to receive the call. The negative impact on interstate CPN policies is

exacerbated because residents in California receive and transmit more interstate calling minutes than the residents of any other state. Depriving parties participating in those calls from the benefits we anticipate of the deployment of interstate CPN-based services necessarily thwarts and impedes the accomplishment of our objectives, particularly the development of interstate CPN-based services.

87. California's policy also deprives both parties on an interstate call from California of choice, an important element in our balancing of the rights and expectations of the calling and called parties. First of all, we have determined that as a matter of federal policy, the called party should have access to incoming CPN unless the calling party has exercised his right not to have his CPN revealed. While we have carefully balanced the privacy interests of the calling party with the expectation of the called party to receive CPN, California's default policy upsets this balance on an interstate call. California provides no evidence that a caller who chooses to have an unlisted or nonpublished number also wants per line blocking. It is not apparent that a customer with an unlisted number, readily available through directory assistance, would object to the passage of that same number to a called party of his choosing when he makes a telephone call. Indeed, while it appears that more than forty states offer some level of per line blocking, no other state automatically assumes callers with unlisted or nonpublished numbers want per line blocking. The record indicates that the general availability of per line blocking adversely affects the penetration of CPN-based services. Because we seek to make interstate CPN-based services widely available, we are reluctant to conclude, absent any supportive evidence, that California's assumption is correct.

As demonstrated by the above findings, the FCC's preemption rule is a "reasonable exercise of its discretion, based on consideration of relevant factors, and supported by the record." *California* I, 905 F.2d at 1217.

[6] In the First R&O, the FCC established per call blocking as the national requirement for interstate calls and preempted any state that permitted per line blocking. The FCC also preempted states that authorized disclosure of the CPN with no blocking option at all. In its Second R&O, the FCC substantially narrowed the scope of its preemption order. It authorized per line blocking in states already providing that system. The FCC's preemption order precludes per line blocking default only for nonpublished subscribers and emergency service organizations that do not communicate their choice. The FCC's preemption order satisfies the requirement that a preemption rule should be narrowly tailored to fit federal policies. *California* III, 39 F.3d at 932. We hold that the FCC's preemption regulation is not arbitrary and capricious. We also conclude that the FCC's preemption of CPUC's default fits within the "impossibility exception" to section 2(b)(1) of the Communications Act.

II. *The FCC's Preemption Order Does Not Violate The Federal Constitution*

CPUC raises two federal constitutional challenges to the FCC's Caller ID rule. The FCC asserts that the CPUC lacks standing to present a constitutional challenge. The FCC also maintains that its preemption order does not invoke state action. We review constitutional questions *de novo*. *United States v. Yacoubian*, 24 F.3d 1, 3 (9th Cir. 1995).

A. *CPUC Has Standing To Challenge The FCC's Preemption Order*

In appealing from an FCC preemption order, a state acts not merely as *parens patriae*, but also to vindicate its own sovereign interest in law enforcement and its subsidiary interest in creating and enforcing fair and effective public utility regulation. *Snapp v. Puerto Rico*, 458 U.S. 592, 601-602 (1987); *Pacific Gas & Elec. Co. v. Energy Resources Comm'n of California*, 461 U.S. 190, 205 (1983). The CPUC has standing to challenge the FCC's preemption order because of its interest in regulating intrastate telecommunications services consistent with federal constitutional protections and in exercising California's sovereign powers over matters reserved to the states.

B. *The CPUC's Exercise Of Its Authority Is State Action*

The FCC relies on two cases for the remarkable proposition that the CPUC is not a state actor. *Information Providers' Coalition v. FCC*, 928 F.2d 866 (9th Cir. 1991); *Carlin Communications, Inc. v. Mountain States Tel. & Tel. Co.*, 827 F.2d 1291 (9th Cir. 1987), *cert. denied*, 485 U.S. 1029 (1988). Neither case supports this theory. In Information Providers' Coalition, the court held that because "carriers are private companies, not state actors," there was no constitutional restraint on the termination of telephone service to "dial-a-porn operators." *Id.* at 877. In *Carlin Communications, Inc.*, the court concluded that a private telephone company was liable as a state actor under 42 U.S.C. § 1983 because a state prosecutor had directed it to prohibit transmission of the plaintiff's "adult entertainment." *Id.* at 1295, 1297. In this

matter, the CPUC, a state agency, contends that the preemption of its per line blocking default rule has violated the federal constitution. The FCC's argument that the CPUC's exercise of its rulemaking authority is not state action is clearly frivolous.

C. *The FCC's Preemption Of The CPUC Does Not Implicate Constitutional Privacy Rights*

[7] CPUC argues that the FCC's preemption of the CPUC's per line blocking default "violates the federal constitutional privacy rights of California citizens." (CPUC Brief at p. 29). CPUC has not cited any authority to support the notion that a telephone number is protected by the federal constitution. The Supreme Court has noted that "exposure of the self to others in varying degrees is a concomitant of life in a civilized society." *Time Inc. v. Hill*, 385 U.S. 374 (1967). Not every "exposure" raises privacy concerns under the United States Constitution. The Supreme Court has limited the constitutional right to privacy to interferences with "a person's most basic decisions about family and parenthood . . . as well as bodily integrity." *Planned Parenthood v. Casey*, ___ U.S. ___, 112 S. Ct. 2791, 2806 (1992). A phone number is not among the select privacy interests protected by a federal constitutional right to privacy.[12] In *Smith v. Maryland*, 442

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[12] *See, e.g., Griswold v. Connecticut*, 381 U.S. 479, 484 (1965) (upholding married couple's right to use contraceptives); *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) (invoking the "sanctity of the family" and striking down, on privacy grounds, ordinance limiting right of certain relatives to occupy the same dwelling); *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (striking down law prohibiting persons of different races from marrying); *Skinner v. Oklahoma*, 316 U.S. 535, 543 (1942) (striking down law requiring sterilization of certain felons).

U.S. 735 (1979), the United States Supreme Court held that there is no Fourth Amendment right to prevent the disclosure of the telephone numbers dialed from a home telephone. The Court explained:

> Telephone users, in sum, typically know that they must convey numerical information to the phone company; that the phone company has facilities for recording this information; and that the phone company does in fact record this information for a variety of legitimate business purposes.

442 U.S. at 743 (Fourth Amendment protections do not extend to the installation and use of a pen register to record numbers dialed from a telephone).

[8] Relying on *Smith*, the highest courts in Ohio and South Carolina have ruled that there is no federal privacy right to protection from disclosure of telephone numbers via Caller ID services. *Ohio Domestic Violence Network v. Public Utilities Commission of Ohio*, 70 Ohio St. 3d 311, 318, 638 N.E.2d 1012, 1019 (Ohio S. Ct. 1994); *Southern Bell Telephone and Telegraph Co. v. Hamm*, 306 S.C. 70, 77-78, 409 S.E.2d 775 (1991). In *Saldana v. Wyoming*, 846 P.2d 604 (1993), the Wyoming Supreme Court held that there is no federal constitutional right to privacy that proscribes the disclosure of a nonpublished telephone number. *Id.* at 611. We conclude that the preemption rule does not violate any cognizable privacy interest.

D. *The FCC's Preemption Of The CPUC Does Not Violate The First Amendment*

[9] CPUC argues that the FCC's preemption of CPUC's per line blocking default violates the First Amendment right

of subscribers to remain anonymous and silent. Each of the First Amendment cases relied on by CPUC protects core political or religious speech.[13] The First Amendment protects persons from being compelled to express "adherence to an ideological point of view he finds unacceptable." *Wooley v. Maynard,* 430 U.S. 705, 714-715 (1977). The government cannot require an individual to participate in the dissemination on an "ideological message." *Id.* Exposure of a telephone number does not violate the First Amendment right not to speak.

[10] The argument that the Commission's preemption order violates a First Amendment right to speak anonymously is similarly devoid of merit. The CPUC's reliance on cases involving the right of anonymous political speech that have required disclosure of identity under threat of criminal and civil penalties is equally misplaced. In *McIntyre v. Ohio Elections Comm'n,* ___ U.S. ___, 115 S. Ct. 1511 (1995), the Court struck down a statute which prohibited the distribution of campaign literature. *Id.* at 1524. In *Talley v. California,* 362 U.S. 60 (1960), the Court declared unconstitutional a statute making it a crime to distribute anonymous handbills. *Id.* at 64-65. The Court instructed in *Talley* that "[t]here can be no doubt that such an identification requirement would tend to restrict freedom to distribute information and thereby freedom of expression." *Id.* Similarly, in the third case relied on by CPUC, the California Supreme Court struck down a regulation requiring phone messages to include the name and address of the speaker because it "had the effect of restricting

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[13] The CPUC relies on *Wooley v. Maynard,* 430 U.S. 705, 714 (1977); *Miami Herald Publishing Co. v. Tornillo,* 418 U.S. 241, 258 (1974); *West Virginia Board of Education v. Barnette* 319 U.S. 624, 633-634 (1943).

the dissemination of ideas." *Huntley v. California PUC*, 69 Cal.2d 67, 72 (1968). Unlike the circumstances in the cited cases, the FCC's regulation does not compel disclosure of the identity of a person who exercises his or her freedom of expression. The FCC's preemption order does not violate the First Amendment right to speak anonymously.

PART TWO

THE "FREE PASSAGE" RULE

I. *The FCC's Free Passage Rule Is Not Arbitrary And Capricious*

AT&T and CompTel contend that the FCC's free passage rule is arbitrary, capricious and violates the APA. They argue that the FCC did not address highly relevant factors in determining whether to adopt a free passage rule. AT&T and CompTel claim that the FCC justified its free passage rule on the ground that it would not impose any costs or losses on IXCs. They assert that the FCC reached this conclusion by relying "solely on the fact that the IXCs' marginal costs of transporting Caller ID over previously constructed SS7 networks were *de minimis*." (AT&T and CompTel Opening Brief at p. 23). AT&T and CompTel assert further that the FCC ignored unrebutted evidence of potentially massive additional costs. Specifically, AT&T and CompTel assert that the FCC failed to consider the cost of the calls that will go unanswered with Caller ID. The record does not support this contention.

The record reveals that the FCC considered the potential loss of revenues that will result from unanswered calls. In finding that the IXCs would not necessarily lose revenues from unanswered calls resulting from the introduction of

Caller ID, the FCC relied on evidence in the record that supports an inference that CPN transmission will increase, rather than decrease, the number of calls answered. The FCC offers in its brief the example, based on comments in the record, that a called party might recognize a long distance number as a friend's and answer a call that might otherwise have gone unanswered. The FCC found evidence in the record that the IXCs would be compensated for any *de minimis* costs of CPN transmission by the revenue generated by other CPN based services. For example, the record shows that the 800 and 900 number services, for which AT&T bills the called party directly, represent a substantial portion of the long distance market. The FCC received evidence that in a typical day, more than 40 percent of the 160 million calls on the AT&T network are 800 number calls.

AT&T and CompTel next assert that there is no rational connection between the facts the FCC found and its stated policy objective of fostering investment in CPN based services. They claim that the FCC found that Caller ID services were beneficial to telephone customers and would enhance the value of the local Caller ID services. AT&T and CompTel assert that the free passage rule will not encourage IXC investment in SS7 systems.

The FCC concluded that IXCs will benefit from the free passage rule because IXCs with SS7 will continue to receive CPN from LECs without additional charge to the access fees the IXCs already pay LECs. This permits IXCs to develop and market their own interstate CPN based services, such as: customized customer service (which permits a special telephone ring for selected incoming calls), voice message storage, call routing, personal communication services, and advanced intelligence network. The FCC found further that

IXCs have the incentive to develop and deploy the SS7 system, irrespective of the revenues derived from CPN based services, because SS7 provides: greater network efficiencies due to quicker call set up, enhanced flexibility in call processing, and reduction in billing fraud. Contrary to AT&T and CompTel's contentions, the FCC articulated a rational connection between the facts found and its stated policy objective of fostering investment in CPN based services.

AT&T and CompTel next assert that the free passage rule is internally inconsistent because it bars IXCs from imposing charges to realize the value of their investment in SS7 upgrades, while it "allows LECs to earn additional revenues from the inclusion of interstate calls in the LECs' intrastate residential Caller ID offerings." (AT&T and CompTel Brief at p. 26). They argue such inconsistency is a "hallmark of arbitrary decisionmaking." *Id.* According to AT&T and CompTel, the impact of the FCC's free passage rule was to deprive them of the ability to recover for their investment in SS7 upgrades. AT&T and CompTel contend further that the FCC's determination, that the IXC investment in the SS7 system constitutes a "general network upgrade" with costs that must be recouped in general charges to be paid by all users and not in rates targeted to recipients, is contrary to prior FCC decisions. We disagree.

The FCC's free passage rule is consistent with its prior rulings that the investment in SS7 systems constitutes a general network upgrade with costs that must be recovered in general charges paid by all users. *See Provision of Access for 800 Service*, 6 FCC Rcd 5421, 5428 (1991) ("SS7 represents a general network upgrade, the core costs of which should be borne by all network users").

AT&T and CompTel's contention that the Second R&O permits LECs to charge its local customers for interstate Caller ID services while it bars IXCs from imposing charges on its subscribers finds no support in the record. The FCC's free passage rule does not bar IXCs from recovering their investment in SS7 from their general tariffs, greater network efficiencies, and the additional revenue IXCs can earn from marketing other CPN based services to 800 and 900 number customers. The FCC found, moreover, that it was impractical, because of the lack of relationship between IXCs and called parties, to permit the IXCs to recover fees from residential customers serviced with Caller ID. AT&T conceded in oral argument that it would have developed its SS7 system whether or not it was permitted to charge for interstate Caller ID.

Finally, AT&T and CompTel contend that the free passage rule is invalid because the FCC made no attempt to explain its departure from longstanding policies. AT&T and CompTel point to a decade of FCC decisions recognizing that telecommunications services may be priced to exceed their marginal or incremental costs – and must in aggregate recover the fully distributed or average costs. Thus, AT&T and CompTel assert that the FCC's focus on incremental rather than aggregate costs in this matter reflects a change in policy.

The FCC's free passage rule is not a departure from prior FCC decisions or policies. The FCC found that the cost of transporting CPN over completed SS7 systems was *de minimis* and that the IXCs were already recovering their investment in SS7. AT&T and CompTel have not demonstrated that there is an FCC policy permitting telecommunications companies to charge separately for a transmission whose costs are zero or *de minimis*.

[11] We conclude that the FCC's free passage rule is not arbitrary and capricious and does not violate the requirements of section 10(e) of the APA. 5 U.S.C. § 706.

II. *The FCC's Free Passage Rule Does Not Violate The Communications Act*

AT&T and CompTel assert further that the FCC's order violates the ratesetting provisions of the Communications Act that require the FCC to make findings that an existing rate was unjust and unreasonable, or constituted unreasonable discrimination, prior to the imposition of a new rate.[14] AT&T and CompTel argue that the fact that the free passage rule prohibits IXCs from imposing charges on LECs for the interstate transmission of CPN has the practical effect of barring IXCs from seeking a change in its rates.

The FCC responds that the Second R&O did not constitute ratemaking pursuant to section 205, but rather its action was rulemaking pursuant to section 154(i) and (j).[15] An

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[14] 47 U.S.C. § 205 provides in pertinent part:

> Whenever, after full opportunity for hearing, upon a complaint or under an order for investigation and hearing made by the Commission on its own initiative, the Commission shall be of the opinion that any charge . . . is or will be in violation of any of the provisions of this chapter, the Commission is authorized and empowered to determine and prescribe what will be the just and reasonable charge. . . .

[15] 47 U.S.C. § 154(i) authorizes the FCC to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this chapter, as may be necessary in the execution of its functions." Section 154(j) provides in pertinent part that: "[t]he Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice."

agency's interpretation of a statutory provision or regulation it is charged with administering is entitled to a high degree of deference. *Providence Hosp. of Toppenish v. Shalala*, 52 F.3d 213, 216 (9th Cir. 1995).

AT&T and CompTel base their argument that the FCC impermissibly engaged in ratemaking on a series of cases that hold that "the actual impact of agency action and not its form is decisive." *E.g., AT&T v. FCC*, 487 F.2d 865, 874 (2d Cir. 1973) ("Special Permission" case).[16] These cases do not support their argument. In the Special Permission case, the Second Circuit struck down an FCC order denying AT&T special permission to file a tariff revising existing rates. The court held that the FCC's action interfered with the "careful accommodation of [ratepayer and carrier] interests" underlying the ratemaking provisions of the Communications Act. *Id.* at 873. In the instant case, no IXC has filed a CPN transport tariff. None has been prevented from doing so. The FCC does not act pursuant to section 205 until a tariff has been filed. *PUC of California v. FCC*, 356 F.2d 236 (9th Cir.), *cert. denied*, 385 U.S. 816 (1966).

[12] No complaint has been filed with the FCC, nor has the FCC issued "an order for investigation and hearing made on its own initiative" regarding tariffs or charges filed by any IXC. Thus, the requirements of section 205 have not been violated. "Time and again, '[t]he court has recognized that even where an agency's enabling statute expressly requires it

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[16] The following cases are also cited by AT&T and CompTel: *AT&T v. FCC*, 449 F.2d 439 (2d Cir. 1973); *MCI Telecommunications Corp. v. FCC*, 561 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978); *New York Tel. Co. v. FCC*, 631 F.2d 1059 (2d Cir. 1980); and *North Carolina Utility Commission v. FCC*, 552 F.2d 1036 (4th Cir. 1977), *cert. denied*, 434 U.S. 874 (1977).

to hold a hearing, the agency may rely on its rulemaking authority to determine issues that do not require case-by-case consideration.' " *Mobile Oil Exploration & Producing S.E., Inc. v. United Dist. Cos.*, 498 U.S. 211, 228 (1991) (citation omitted). The FCC is entitled to define what constitutes a reasonable policy in terms of the underlying goals of the Communications Act, and to use rulemaking as part of the process of developing and implementing those policies. *National Association of Regulatory Utility Commissioners v. FCC*, 737 F.2d 1095, 1120 (D.C. Cir. 1984) (the FCC may use rulemaking to develop policies for interstate communications markets, including policies that affect rates), *cert. denied*, 469 U.S. 1227 (1985). Moreover, we must review these determinations deferentially. *Providence Hosp. of Toppenish*, 52 F.3d at 216. Thus, because the FCC did not impermissibly engage in rate making without following the required procedures, we reject AT&T and CompTel's argument that the FCC violated section 205 of the Communications Act.

CONCLUSION

We conclude that the FCC did not act arbitrarily and capriciously, or contrary to law, in ruling (1) that the preemption of the CPUC's rule was necessary to prevent negation of a valid FCC regulatory goal, and (2) that mandating the imposition of the per call blocking option on subscribers with nonpublished numbers and emergency service organizations that do not make a choice between blocking options does not violate any federal constitutional right. We also uphold the FCC's free passage rule because the record shows that the FCC examined the relevant evidence and adequately explained all aspects of its decision.

The petitions for review are DENIED.

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING, 9 FCC RCD 1764 (1994)

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 91-281

In the Matter of

Rules and Policies Regarding
Calling Number Identification
Service – Caller ID

REPORT AND ORDER AND FURTHER NOTICE OF PROPOSED RULEMAKING

9 FCC Rcd 1764

Comments due: May 18, 1994
Replies due: June 21, 1994

Adopted: March 8, 1994; Released: March 29, 1994

By the Commission: Commissioner Barrett issuing a statement.

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APPENDICES

I. INTRODUCTION.

1. On October 23, 1991, the Commission issued a Notice of Proposed Rulemaking in this docket.[1] More than 100 parties filed comments, including local exchange carriers (LECs), interexchange carriers (IXCs), state governments, public interest organizations, trade associations, and private citizens.[2]

2. In the NPRM, the Commission sought to develop the most effective policies to govern interstate calling party number based services such as caller ID.[3] The NPRM sought comment on carriers' progress in deploying interstate caller ID service, and the technical and public policy implications of dual federal and state regulatory policies.[4] We tentatively concluded that a federal model for the interstate delivery of the calling party's number is in the public interest, and necessary for the introduction of many valuable services, including interstate caller ID.

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[1] *Rules and Policies Regarding Calling Number Identification Service*, (NPRM), CC Docket No. 91-281, 6 FCC Rcd 6752 (1991).

[2] *See* Appendix B for a list of commenters and corresponding abbreviations used in this order.

[3] Caller ID identifies the calling party's telephone number to the called party. As an intrastate service, caller ID allows subscribers, when they receive local telephone calls, to have the local exchange carrier transmit to them the telephone number of the station originating the call. Called parties must subscribe to caller ID from the local telephone company and purchase or lease number identification devices, which are classified as customer premises equipment (CPE). Technology now being deployed – end-to-end interconnected Signalling System 7 (SS7) networks – can support an interstate caller ID service. This proceeding addresses issues in anticipation of interstate caller ID and other calling party number based services becoming available.

[4] NPRM at para. 1.

3. In this Order, we find that a federal model for interstate delivery of calling party number is in the public interest, that calling party privacy must be protected, and that certain state regulation of interstate calling party number (CPN)[5] based services, including interstate caller ID, must be preempted. We amend Part 64 of the rules to require that common carriers using Common Channel Signalling System 7 (SS7) and subscribing to or offering any service based on SS7 functionality must transmit the calling party number parameter and its associated privacy indicator on an interstate call to connecting carriers. We also require that carriers offering CPN delivery services provide, at no charge to the caller, an automatic per call blocking mechanism for interstate callers. The rules require that terminating carriers providing calling party based services, including caller ID, honor the privacy indicator. We find that the costs of interstate transmission of CPN are *de minimis*, and that the CPN should be transmitted among carriers without additional charge. We also require that carriers participating in the offering of any service that delivers CPN on interstate calls inform telephone subscribers that the subscriber's number may be revealed to called parties and describe what steps subscribers can take to avoid revealing their numbers. Further, we adopt rules to restrict the reuse or sale of information generated by automatic number identification (ANI) or charge number services, absent affirmative subscriber consent.[6] Finally, we note that additional

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[5] The calling party number is the subscriber line number or the directory number contained in the calling party number parameter of the call set-up message associated with an interstate call using SS7. The calling party number parameter includes an associated privacy indicator.

[6] Automatic Number Identification (ANI) based services were developed in the pre-SS7 (multifrequency) signalling environment as the

comments are sought through a separate public notice in the *Computer III* Remand Proceeding on whether residential and small business customers' privacy concerns warrant revision of the Commission's rules governing reuse and sale of customer proprietary network information (CPNI).[7] In the Further Notice of Proposed Rulemaking, we seek comment on whether more detailed customer education rules should be adopted. We also seek comment on extending the policies adopted herein to other services that might identify the calling party.

II. DISCUSSION.

A. Calling Party Number Services Should be Available to Interstate Subscribers Nationally.

4. *Risks and Benefits.* In the NPRM, the Commission stated its tentative view that the availability of interstate caller ID would enhance the value of the service to intrastate

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billing telephone number of the calling party, and are transmitted primarily on toll/access calls on the trunk side connection of the LEC switch. The service is used by LECs and IXCs to identify telephone numbers for billing purposes, but has been made available to customers who subscribe to 800 and 900 services. Delivery of ANI to a subscriber requires a dedicated line between the IXC and the business subscriber and is transmitted directly to that subscriber, bypassing the terminating LEC. *See* NPRM at para. 5. Because it transmits essential billing information and predates SS7 technology, ANI is not blockable in the same way as the calling party number in an SS7 network. In an SS7 environment, ANI may be delivered via a charge number parameter, which does not contain a privacy indicator as does a calling party number parameter.

[7] *See Computer III* Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571, 7605-14 (1991) (enhanced services CPNI rules).

subscribers and augment the available choices of existing interstate services for all subscribers. The Commission noted that the ability to choose caller ID and other services that rely on access to the calling party's number should be available to interstate subscribers nationally.[8] The majority of commenters supported this view and described in detail the potential benefits to the public of services based on the calling party's number.

5. In its comments, AT&T identified potential uses of interstate calling party number for such services as pay-per-view television, order entry/verification, voice message storage, secure computer access, customized customer service, business fraud reduction, call routing, emergency dispatch, health care services, telephone banking, home shopping, dealer locator, and selective call message forwarding. McCaw states that caller information will significantly improve cellular and other service offerings because cellular subscribers pay for incoming calls. Moreover, McCaw notes that ubiquitous caller ID will facilitate cellular enhancements including conventional caller ID, more responsive customer service, new cellular CPE voice synthesizers, and service for roaming subscribers. SNET states that its studies show that caller ID aids persons with hearing impairments in answering calls; law enforcement in determining crank, threatening, false alarm calls and emergency dispatches; and hospital crisis centers in identifying and deterring nuisance calls.

6. In contrast, Colorado DVC asserts that caller ID is not in the public interest because of the threat it poses to the privacy and safety interests of the calling party. Colorado

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[8] *Id.* at para. 8.

Consumer contends that call trace is the preferable service to stop obscene and harassing calls. Bell Atlantic replies that call trace will not work if another call is received before tracing is attempted, and that customers who have used both caller ID and call trace prefer the former. Consumer Action, Washington UTC, and NYS Law agree with Colorado DVC that caller ID has little merit and may threaten public health and safety as well as jeopardize important privacy interests.

7. While we agree that passage of the calling party number does create risks of lost privacy, we must weigh these risks against the potential benefits brought by interstate services that passage of the calling party's number makes possible. Other services available to protect subscriber privacy, such as Call Trace, are limited in scope and do not permit either the public or service providers to take advantage of beneficial services. The commenters briefly discuss some of these benefits. For example, computer systems could limit remote access only to previously approved calling numbers, with calling party number based services like caller ID making verification for access nearly instantaneous. Service providers who respond to telephone orders, such as stock brokers or parts and equipment dealers, could use the calling party's number to direct the call immediately to the appropriate department for service. Banks could program data sources to have customer profile information available as a call is answered. With interstate delivery of calling party number, calls to national service centers could be routed automatically to local service centers closest to the calling party. Consumers making orders could have their name, address and billing information verified instantaneously. Indeed, a significant number and kind of customized national services can develop as a result of instant recognition of the calling party.

8. Many of these potential services would permit transactions to occur more efficiently. In an economy that averages more than one billion interstate calling minutes a day, even small efficiencies on individual calls could become significant in the aggregate. Providing the public with rapid and efficient interstate telecommunications services is at the heart of our responsibilities, particularly if they can be provided at very little additional cost. As illustrated above, passage of the calling party number can promote technological innovation and new applications that will foster economic efficiency and provide new employment, manufacturing and investment opportunities.

9. None of these services and benefits are possible, however, unless the calling party number is passed freely among carrier networks. It is significant that the categories of those benefiting from these new opportunities are very broad. For example, consumers and individuals benefit by having additional options for meeting their customer service needs and by having transactions completed more quickly and more accurately. As workers and entrepreneurs, they benefit by having new employment opportunities. Businesses benefit because they can complete transactions more quickly, which can lower incremental costs of transactions, potentially leading to savings for consumers. Telephone companies benefit by revenues from new services, and by greater use of their networks. Greater use of CPN based services by consumers and service providers will create incentives for carriers who do not have SS7 networks to install them. This will enhance the nation's telecommunications infrastructure, to the benefit of all who use it. Most of the comments directed against our proposal in the NPRM are based on legitimate concerns that individuals have access to a means of protecting their privacy

where doing so is important. We believe technology can address these concerns regarding protections for individual privacy. Accordingly, we find that the potential benefits of services based on calling party number serve the public interest and affirm the NPRM's tentative conclusion that CPN-based interstate services such as caller ID should be available to interstate subscribers nationwide.

10. *Deployment by Carriers.* In the NPRM, the Commission sought detailed comments on carriers' progress toward establishing joint offerings of CPN-based services, and any impediments that have been identified.[9] The record does not reflect extensive response to that inquiry. It appears that although the deployment of the necessary technology for interstate calling party number based services is well underway, other factors have impeded progress. In particular, varying state regulatory responses to privacy issues appear to be impeding the development of interstate services. Moreover, commenters express concern that this lack of national uniformity in regulating interstate SS7 calling party number based services may eliminate a source of the revenues expected from such services. In their comments, Rochester, Ameritech, BellSouth, GTE, McCaw, and US West support a national policy for caller ID because federal standards are essential to achieve the goals of nationwide availability of calling party number based services. McCaw states that it supports a federal policy for caller ID and ANI that accommodates both state concerns and industry diversification and experimentation. In contrast, Allnet contends that there is no compelling federal interest to promote nationwide availability of caller

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[9] NPRM at para. 11.

ID and that if there is a demand for interstate caller ID, market forces will assure its availability.

11. The record reflects that national policies on interstate CPN-based services such as caller ID are needed to reduce risks of stranded investment and to remove impediments to development of services consumers are likely to find beneficial. In addition to providing additional choices for consumers, such services offer significant efficiency dividends for all users of interstate telephone services. These efficiency gains promise to lower incremental costs of interstate calling party number based services, including caller ID, and increase national productivity. Carriers may be wary to invest in technology or delivery systems that may later become incompatible with the varying state requirements or incapable of satisfying federal policy. Resolution of privacy, blocking, and preemption issues is necessary to enable the benefits of these services to occur. By removing impediments created by administrative uncertainty, we seek only to resolve those issues necessary for the efficient introduction of the services. The effective date of the rules adopted here will be April 12, 1995, which should allow sufficient time for completion of any coordination or other arrangements, discussed infra, necessary for full compliance with the rules.

B. Transmission of the Calling Party Number throughout the Network.

12. In the NPRM, we tentatively concluded that the transmission of the CPN by the LEC to the IXC is an essential element of interstate CPN-based services such as caller ID. The Commission proposed that LECs should be required to provide CPN to IXCs as soon as technologically feasible and,

similarly, that IXCs should be required to transmit CPN to terminating LECs.[10]

13. AT&T states that requiring IXCs to transmit interstate CPN to LECs is unnecessary because the competitive market already gives IXCs incentive to offer innovative interstate caller ID services to end users. Moreover, AT&T contends that such a requirement would deprive IXCs of the ability to earn revenues from their substantial investments in SS7 technology. Allnet argues that the requirement would compel all IXCs to participate in SS7 interconnection, thus compromising network integrity.

14. Ameritech, Nynex, Pacific, Centel, and NTIA concur that the Commission should facilitate the provision of interstate caller ID by requiring passage of the calling party's number between carrier networks without modification. MCI agrees that the Commission should require LECs to provide the CPN to IXCs, but it opposes any requirement that IXCs be required to transmit the CPN to the terminating LEC because it states the LEC would then be the lone provider of caller ID. In opposition, BellSouth contends that the transmission of the CPN is essential, and as part of SS7 does not require additional network processing by the IXC nor impose significant cost. Further, BellSouth argues that free delivery of the CPN to terminating LECs would not establish LECs as monopoly providers; rather, IXCs could develop competing CPN-based interstate services that bypass LECs as terminating carriers. NTIA and USTA assert that an IXC's offering of the calling

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[10] *Id.* at para. 12.

party number should be available through all means of interconnection to end users, including LECs, alternative local service providers, or the IXC itself.

15. Nynex proposes that mandatory delivery of the calling party number parameter among all networks is in the public interest. Further, Nynex supports McCaw's proposal that technical standards for transmission of caller ID and ANI between cellular and landline carriers be developed.[11] However, it notes that cellular carriers do not receive ANI from Nynex because transmission of ANI to cellular carriers is not technologically feasible.

16. We affirm our tentative finding that interstate CPN-based services such as caller ID will not be possible unless the calling party number is transmitted from the originating carrier to the terminating carrier. In our 800 number portability proceeding, major LECs filed access tariffs providing for 800 number portability using SS7 technology.[12] Many Bell Operating Companies (BOCs) have filed access tariffs with CPN as a nonchargeable option. Calling party number is an element of access service in virtually all SS7 access tariffs filed at the Commission and these tariffs follow industry standards for SS7 interconnection. The American National Sandard for Telecommunications – Signalling System Number 7 (SS7) – Integrated Services Digital Network, ANSI T.113, 1988, includes calling party number as an optional parameter of an SS7 network. Similarly, the subsequent

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[11] *See* discussion of ANI in Section F, *infra*.

[12] Provision of Access for 800 Service, 4 FCC Rcd 2824 (1989), *modified*, 6 FCC Rcd 5421 (1991).

BellCore guidelines for SS7 interconnection with a BOC include CPN as an optional parameter.[13]

17. We conclude that carriers should pass calling party number information where capable of doing so. In view of the foregoing, we amend Part 64 of the rules to require that not later than April 12, 1995, common carriers using Signalling System 7 and subscribing to or offering any service based on SS7 functionality must transmit the calling party number parameter and its associated privacy indicator to connecting carriers on an interstate call.[14] Further, we amend the rules to prohibit common carriers from modifying or overriding the privacy indicator on an interstate call. We emphasize that carriers are not required to invest in SS7 technology in order to facilitate delivery of the calling party number. Carriers are only required to transmit the CPN and privacy indicator where technically feasible. Because transmission of the calling party number requires SS7 technology, technical feasibility exists wherever SS7 technology is used. We now turn to the issue of the costs associated with the transmission of the CPN.

C. Costs of Interstate Transmission of Calling Party Number.

18. Most IXC commenters contend that, if required to transmit the calling party number, IXCs should be compensated for such transmission. AT&T avers that IXCs incur costs in acquiring and delivering interstate CPN and that its

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[13] Common Channel Signalling (CCS) Network Interface Specification, Bellcore, TR-TSV-000905 (Issue 1, August 1989).

[14] *See* Appendix C.

decision to invest in SS7 rested in part on the anticipation of revenue from new services such as caller ID. MCI concurs with AT&T and further contends that IXCs already pay for calling party numbers as part of feature group D switched access and are developing services which will provide the called party with the calling party's telephone number. Allnet proposes that IXCs who do not voluntarily engage in forwarding caller ID should not bear any of the costs of deployment. Metromedia argues that carriers terminating calls should be responsible for billing those called parties subscribing to interstate caller ID where appropriate; terminating carriers should compensate IXCs passing the information.

19. Nynex believes that if the CPN is passed freely from carrier to carrier, then each carrier may use it to provide services to end users, consistent with cost-based rather than market-based pricing for Open Network Architecture service offerings. Bell Atlantic agrees that if IXCs are allowed to charge for calling party number the cost to consumers will be unnecessarily increased. United States that a single price established in the local jurisdiction for all caller ID regardless of jurisdiction is appropriate. United cites to the precedent for local service pricing of custom calling features like call forwarding of interstate toll calls.

20. SWB concurs with other commenters that CPN should be passed from carrier to carrier at no charge because it is an intrinsic part of SS7 call setup and no cost is associated with filling the calling party number parameter in the SS7 message. SWB disagrees with IXCs such as AT&T, MCI, and Allnet which assert that charging for passage of the CPN would permit them to share in revenues from the LEC's services that depend on passage of the calling party number. In essence, states SWB, the IXCs want to charge for the

passage but receive it free. SWB proposes that the Commission require passage at no charge, thus eliminating extra charges which would be passed on to consumers.

21. McCaw agrees with SWB that CPN should be passed free of charge. McCaw asserts that to encourage maximum possible participation of all carriers as co-equal carriers, the Commission should prohibit compensation among carriers that pass ANI or caller ID information because the costs of ANI and caller ID are recovered in the overall SS7 costs. Centel argues that IXCs should be prohibited from charging either the originating or terminating LEC for transport. Centel asserts that revenue sharing issues should be resolved between carriers, and notes that it would cost IXCs more to remove the CPN from their systems than to allow passage to terminating LECs.

22. CFA, Colorado DVC, Maryland PC, Michigan PSC and others argue that costs associated with caller ID should be borne by subscribers to the service. The Illinois CC notes that it has ordered that the costs of providing per call blocking be borne by those who subscribe to caller ID. IIA proposes that the per call blocking costs should be imposed upon the calling party on the theory that suppression of the calling number is a special service the cost for which should be borne by the party who chooses to invoke it. Consumer Action contends that LECs are improperly allocating the costs of the SS7 switches and supports this contention with data which it believes show that the body of ratepayers is subsidizing SS7-based service, which only benefits 5-6% of telephone customers.

23. We find that the unimpeded flow of the calling party number throughout the network ensures the greatest

diversity of offerings to subscribers and eliminates costs that can delay or impede development of CPN based services. To the extent these services improve productivity, lower incremental costs and create new employment, investment and other opportunities, they benefit a wide range of consumers and producers. As noted above, industry standards already include calling party number as an optional parameter of an SS7 network, and the calling party number is an element of access service in virtually all SS7 access tariffs filed at the Commission. In most cases, SS7 signalling replaces older signalling methods used in an IXC network and provides benefits to the carrier such as more efficient call routing and reduced exposure to fraud. We thus conclude from the record before us that the costs of transmitting CPN are *de minimis*, and that accordingly, the calling party number parameter and associated privacy indicator should be transmitted among carriers at no additional charge.

D. Interstate Caller ID Privacy Issues.

24. In the NPRM, we balanced the privacy interest of the called party against the privacy interest of the caller and proposed that interstate caller ID should include some measures to protect calling parties' privacy. We sought comment on whether these privacy interests are matters of public policy or are constitutional in nature. We noted that any regulatory response to protect the privacy interest of the calling party should take into account the public benefits of caller ID and should not undermine the value of the service overall.[15] Most commenters agree that societal expectations of privacy

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[15] NPRM at paras. 14-15.

require that interstate caller ID include some type of privacy protection mechanism.

25. *Constitutional Issues.* AT&T contends that the provision of interstate caller ID by private telephone companies does not implicate the U.S. Constitution, which, AT&T argues, does not regulate private activity relevant to this proceeding. GTE concurs with AT&T and adds that in recent cases the courts found no state action was involved when a LEC refused to provide communications service or billing and collection service to dial-a-porn providers.[16] Further, GTE argues that in *Smith v. Maryland,* 442 U.S. 735 (1979), (*Smith*), the U.S. Supreme Court held that there is no federal constitutional protection from disclosure of digits dialed on the network.

26. In opposition, Georgia CUC cites to testimony before the Georgia PUC that concludes that information is constitutionally protected when a legitimate expectation exists that the information will remain confidential.[17] California PUC contends that there exists a non-frivolous claim that the First Amendment right to free speech includes a right of the calling party not to be compelled to disclose his or her telephone number.[18] Ohio OCC concurs that there is an

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[16] GTE cites *Dial Information Services Corp. of New York v. Thornburgh,* 938 F.2d 1535 (2d Cir. 1991), (DISC), and *Information Providers' Coalition v. FCC,* 928 F.2d 866 (9th Cir. 1991), (*Information Providers*).

[17] Georgia CUC also cites *Mangels v. Pena,* 789 F.2d 836, 839 (10th Cir. 1986), (*Mangels*).

[18] California PUC cites *Pacific Gas and Electric Co. v. Pub. Util. Comm'n of California,* 475 U.S. 1, 10-11 (1986) for the proposition that an individual's First Amendment right not to speak may not be vitiated as a condition for his/her use of the telephone network.

identifiable federal constitutional privacy interest that includes telephone digits and supports this argument citing *Griswold v. Connecticut*, 381 U.S. 479 (1965) (the right to make decisions about procreation) (*Griswold*), and *Whalen v. Roe*, 429 U.S. 589 (1977) (individual interest in avoiding disclosure of personal matters) (*Whalen*). Pennsylvania PUC states that the Commonwealth Court of Pennsylvania held that caller ID is *per se* unconstitutional under the Pennsylvania state constitution because of the theoretical risk that a caller wanting to remain anonymous would accidentally forget to use the available blocking feature.

27. The record and case law demonstrate that there is no federal constitutional bar to the offering by carriers of CPN-based services such as caller ID. In *Smith*, the Supreme Court held that there is no privacy right under the Fourth Amendment protecting telephone numbers from disclosure because the application of the Fourth Amendment depends on whether first, the person invoking protection can claim that a "legitimate expectation of privacy" has been invaded by the government. In *Smith*, pen register records kept upon police request by a telephone carrier on calls made by a robbery suspect became evidence used to convict him on robbery charges. At issue was whether seizure by police of the record of phone numbers that the suspect called constituted a "search" for Fourth Amendment purposes and thus required a warrant. The court's decision rested upon analysis of whether the individual exhibits an expectation that something will remain private, and second, whether the individual's subjective expectation of privacy is one which society is prepared to recognize as objectively reasonable. *Smith* at 740. The court held that the expectation of privacy for phone numbers is not one that society is prepared to recognize as reasonable,

because when one voluntarily exposes his phone number to the telephone company's equipment, one assumes the risk that the company may reveal the number to others. *Id.* at 743-45. The Court also drew a distinction between the content of a phone conversation and the number dialed and found that protecting the content is more important than the number dialed because phone numbers are not communication in and of themselves, but merely establish that communication has been attempted. *Id.* at 741.

28. The Pennsylvania state court ruling cited by the Pennsylvania PUC does not suggest otherwise. The Commonwealth Court struck down Pennsylvania PUC's order which had approved caller ID in part because the court found that, even with a blocking mechanism, caller ID violates Pennsylvania constitutional privacy rights.[19] The constitutional privacy right asserted in *Barasch* rests on the court's interpretation of the Pennsylvania Constitution. *Id.* at 87, 89. However, the U.S. Constitution is not cited in *Barasch* as imposing any privacy right in a phone number; indeed, such an interpretation would be inconsistent with *Smith*. Moreover, on appeal, the Supreme Court of Pennsylvania held that caller ID violates the "trap and trace" provisions of the state wiretap law and did not address the constitutional privacy issue.[20]

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[19] *Barasch v. Pennsylvania Public Utility Commission*, 576 A.2d 79 (Pa. Cmwlth. May 30, 1990), *aff'd sub nom, Barasch v. Bell Telephone Co. of Pennsylvania*, 605 A.2d 1198 (Pa., March 18, 1992) (*Barasch*).

[20] In December of 1993, Title 66 of the Pennsylvania Consolidated Statutes was amended to declare that caller ID is a lawful service if it permits a caller to withhold display of the caller's telephone number and other identifying information from the called party on both a per-call and per-line basis. *See* 66 PA. CONS. STAT. § 2906 (1993).

29. GTE cites two cases (*supra*, note 16) in support of the principle that common carriers are private entities and thus no state interference with individual privacy rights is involved. *DISC* involves a challenge by dial-a-porn companies to the Helms Amendment, 47 U.S.C. §§ 223(b) & (c), which allows phone companies to require dial-a-porn services to notify them that they will be providing indecent messages and/or to require dial-a-porn services to utilize independent billing. The Court of Appeals held that no prior restraint of free speech was created by the statute because no governmental action was involved. The statute merely permits phone companies to choose whether to provide billing services to dial-a-porn companies. Similarly, *Information Providers* involves a challenge to Section 223 of the Communications Act of 1934, as amended, 47 C.F.R. § 64.201 (1991). The court held that carriers are private companies, not state actors, and are, therefore, not required to continue, restrict, or terminate services of particular users and that a carrier is free under the constitution to terminate service to dial-a-porn operators altogether. These cases generally support the proposition that when a carrier can choose whether to offer certain services, no state action is involved.

30. On the basis of this body of law and the record, we find that the offering of caller ID does not violate privacy rights protected by the U.S. Constitution.[21] Constitutional protections of privacy relate to government action and no

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[21] *Mangels, Griswold,* and *Whalen* are inapposite. As the Court said in *Mangels*, "[t]he legitimacy of any individual's expectation [of privacy] depends, at least in part, upon the intimate or otherwise personal nature of the material. . . . " *Mangels* at 839. As the Court held in *Smith*, telephone numbers do not rise to a level of personal or intimate information.

government action is involved here. Moreover, we find that federal courts have not, to date, recognized an individual privacy right in telephone numbers.[22]

31. *Public Policy and Privacy Mechanisms.* The majority of commenters agree that the privacy interests associated with caller ID are a matter of public policy or societal expectation. California Consumer Affairs proposes that federal interstate caller ID policies must recognize that the governmental interest in protecting public health, safety and welfare dictates that some blocking option be available. NY Law Project underscores that with a relatively inexpensive personal computer and a CD ROM reader, a business caller ID subscriber could access data bases and display a data profile of a caller even before the telephone is answered, or while the call is in progress. SWB recognizes the need to protect the confidentiality of non-published numbers, undercover police officers, domestic violence shelters, and the integrity of hotlines. Massachusetts contends that the effective functioning of law enforcement in Massachusetts would be compromised if caller ID were offered without a privacy protection mechanism. GTE, however, asserts that tariff language requires that

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[22] The California PUC's reliance on *Pacific Gas. v. California* to link caller ID services with a constitutionally protected right not to speak is misplaced. In *Pacific Gas v. California* the Court considered whether the California PUC could require a privately owned telephone utility to include in its billing envelopes speech of a third party with which the utility disagrees. The Court held that the California PUC's order impermissibly restricted billing envelope access to only views with which the telephone utility disagreed. In no instance did the Court reconsider its prior holding in *Smith* that there is no constitutionally recognized expectation of privacy that attaches to phone numbers.

the caller identify himself to the called party.[23] Nynex contends that caller ID redresses a longstanding imbalance which favored the calling party because the called party had no information on which to decide whether or not to answer the telephone.

32. BellSouth proposes that with all number delivery, callers can protect their identity by calling from telephones not recognizable by the called party. BellSouth states it has developed specialized service offerings for the privacy concerns of law enforcement and domestic violence shelters. Bell Atlantic also advocates unrestricted delivery on the premise that per call blocking is used infrequently and provides malicious callers the opportunity to continue to make harassing calls. MCI states that delivery of the calling party number should be unrestricted because unlimited availability of customer initiated blocking will undermine the service and diminish its value to the public. However, MCI concurs with BellSouth that limited blocking should be available to protect public safety groups. USCG proposes that any blocking mechanisms not apply to calls made to United States Coast Guard emergency telephone numbers. USTA is in favor of unrestricted delivery of caller ID across all carrier networks, whether interstate or intrastate. However, USTA proposes that per call blocking for specific applications may be appropriate.

33. IIA argues that unrestricted delivery of caller ID threatens a broader concept of information privacy – a right of the individual to control the dissemination of information about one's self and one's activities. Kentucky states that Bell

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[23] GTE cites, *inter alia*, GTOC Tariff FCC No. 2 Section 2.3.1; AT&T Tariff F.C.C. No. 1, Section 2.4.1.C.

Atlantic's claims of reduced harassing and obscene calls appear to be more a function of changes in the handling and routing of such calls than any real reduction on the actual placing of these calls. Ohio OCC states that unrestricted delivery of caller ID would undermine the ability of professionals who must work from their residence, and that public hearing testimony in Ohio resounded with consumer objections to disclosure of non-published numbers.

34. Most commenters do not advocate completely unrestricted delivery. Even those commenters that advocate unrestricted delivery suggest a limitation on availability of the CPN under specific circumstances. In light of the extensive record before us, we conclude that a regulatory framework for interstate CPN-based services such as caller ID should include some type of privacy protection mechanism. We affirm our prior tentative conclusion that the calling public has an interest in exercising a measure of control over the dissemination of telephone numbers that must be reflected in federal policies governing caller ID service. We discuss specific privacy mechanisms in Section E below.

35. *Private Networks, Emergency Services, and Law Enforcement.* AT&T proposes that there should be no blocking mechanisms prescribed for private or virtual private networks because blocking on business services and on private networks would intrude on the rights of private and virtual private network owners to determine the amount of information delivered on internal calls carried on their networks. AT&T and GTE concur that business services do not commonly implicate personal safety concerns and in a business context, identification is expected. The NPRM sought comment on whether blocking mechanisms jeopardize calling party identification by emergency services. USCG states that

blocking mechanisms should not apply to calls made to emergency telephone numbers because they could degrade emergency service operations. Pacific Bell notes that emergency services could be affected where an individual calling line identification display device is being used in place of the standard public safety answering point console arrangement.

36. In the NPRM, we proposed that the privacy requirements adopted herein to address the privacy concerns within the public network should not apply to communications within private or virtual private networks. We affirm that privacy expectations of the calling party are different when they arise in the context of internal calls within a single private network. Moreover, commenters did not dispute that caller ID systems raise very limited privacy expectations if used solely in connection with legally authorized call tracing and trapping procedures specifically requested by a law enforcement agency. We do not apply the privacy requirements adopted in this order to these narrow sets of circumstances.

37. The record indicates that blocking mechanisms do not affect Enhanced 911 services, which currently locate the calling party on emergency calls via ANI rather than SS7-based caller ID services, which include blocking mechanisms.[24] However, as indicated by USCG and Pacific Bell, blocking mechanisms may jeopardize emergency services which rely on caller ID and thus pose a serious threat to public health and safety.[25] To the extent that CPN based services are used to deliver emergency services, we find that

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[24] *See, e.g.*, Nynex at 14, n. 18.

[25] *See* Appendix C, § 64.1602(d).

privacy requirements for CPN based services should not apply to delivery of the CPN to a public agency's emergency line, a poison control line, or in conjunction with 911 emergency services. We now turn to specific privacy protection mechanisms for assuring that the interstate public network includes a privacy protection option.

E. Privacy Protection Mechanisms, Further Notice of Proposed Rulemaking.

38. The three privacy protection mechanisms prevalent at the state level are (1) per line blocking provided by the telephone company for specific groups (2) per line blocking provided by the telephone company for all customers except those who want their telephone numbers to be delivered, and (3) per call blocking on an automatic or operator assisted basis. Additionally, these options can be offered in combination and free to the user or on a fee basis. In the NPRM, we sought comment on and analysis of the relative merits, technical feasibility and foreseeable costs to carriers and customers of establishing a requirement that interstate caller ID incorporate a per call blocking option.[26] The record demonstrates ample support for the adoption of an automatic per call blocking requirement on interstate caller ID offerings. We discuss each alternative below and affirm the tentative conclusion reached in the NPRM that carrier provided per line blocking mechanisms are unduly burdensome. We affirm that automatic per call blocking is the most responsive alternative to the needs of calling and called parties for interstate calls. Finally, we request comment on whether, and how, these

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[26] NPRM at para. 20.

policies should apply to other services, such as delivery of the calling party name.

39. *Per Line Blocking for Specific Groups.* Pennsylvania PUC states that per call blocking should be available to all subscribers, but free per line blocking should be made available to groups that demonstrate a higher privacy need than the population at large. These groups include non-profit, tax-exempt domestic violence agencies; home telephone numbers of staff members of such agencies; federal, state and local law enforcement; and individuals who have a need for blocking to mitigate the risk of personal injury, as certified by a law enforcement agency. MCI proposes a limited blocking option to protect public safety groups. US West states that its experience with free per line blocking for "special needs" subscribers proved cumbersome and unfair because US West is uncomfortable with determining what groups or individuals have special needs.

40. Commenters that advocate the availability of per line blocking only for certain groups with heightened privacy needs do not address how this mechanism would be implemented on an interstate basis. The two entities that could determine eligibility for privacy protection under this proposal would be the carriers or the government. If the choice is left to the carrier or carriers offering interstate caller ID, the carrier must determine which individual subscribers are entitled to privacy protection. Issues that arise in this determination include: Do certain types of law enforcement personnel have greater needs than others? Do domestic violence shelters have greater needs than teenage runaway facilities? Do individuals who work for these organizations have needs? How would these individuals be identified? How would determinations be kept current? What appeal rights would be available?

These social questions are generally not the type of issues resolved by carriers. We conclude, on the basis of this record, that per line blocking for a special needs category as a federal model is not optimal. It would unnecessarily increase the role of the federal government or carriers in making privacy choices for subscribers. Other regulatory alternatives to address privacy are available on a more equitable basis and do not unduly hamper the viability of CPN based services.

41. *Per Line Blocking Available to All Subscribers.* Consumer Action contends that the only way to ensure that all residential customers do not involuntarily deliver their numbers to caller ID equipment is to require availability of per line blocking. Consumer Action supports its argument that per line blocking would not undercut the usefulness of caller ID by citing Centel's statement that, after 6 months of offering caller ID with a per line blocking option, there was no substantial decrease in individuals subscribing to caller ID. Missouri Counsel states that the absence of free per line blocking effectively eliminates the protection that unlisted numbers provide.

42. DMA asserts that per line blocking would drive up the cost of service and further, that if per line blocking becomes widespread, direct marketers may be unable to use caller ID service for a substantial segment of their customer base, and smaller businesses may find the service unattractive. Rochester notes that in a survey it conducted, 66% of respondents made 75% of their calls to people who already knew their telephone number, and 83% made at least 50% of their calls to people who knew their number. Rochester concludes that per line blocking is only marginally useful and substantially degrades the value of caller ID by causing unnecessary blocked calls. USTA concurs that in the vast

majority of calls, identification of the calling number is of little consequence to the calling party. AT&T points out that per line blocking destroys the lifesaving potential of caller ID for line blocked callers of emergency numbers such as police stations because a caller in distress may forget how to use the unblocking code.

43. In the NPRM, we tentatively concluded that per line blocking unduly burdens calling party number based services overall by failing to limit its applicability to those calls for which privacy is of concern to the caller. The Commission noted that even in the case of law enforcement personnel, there may be a need to maintain calling number privacy on some calls, but that the same number may be used to telephone other law enforcement personnel, victims of crimes, cooperative witnesses, and family or friends. The Commission asserted that in these types of calls, calling number privacy is not needed and calling number identification can actually be a valuable piece of information for both the caller and called parties. The record reflects the useful nature of CPN based services, and the comments of Rochester illustrate that callers are likely to be interested in blocking only a small percentage of their calls. The comments of USCG illustrate the usefulness of caller ID to emergency services. In contrast, Missouri Counsel's analogy to unlisted numbers is inapposite because caller ID only permits parties called by the calling party to capture the calling party number, and then only if the calling party has not activated a per call blocking mechanism. We find that the availability of per call unblocking does not cure the ill effects of per line blocking. Moreover, in an emergency, a caller is not likely to remember to dial or even to know to dial an unblocking code. For the foregoing reasons, we find that a federal per line blocking requirement for

interstate CPN based services, including caller ID, is not the best policy choice of those available to recognize the privacy interests of callers. Thus, carriers may not offer per line blocking as a privacy protection mechanism on interstate calls. We agree that certain uses of captured calling numbers need to be controlled, and address that issue *infra*.

44. *Operator Assisted Per Call Blocking.* There is little support in the record for operator assisted per call blocking. Live operator assisted blocking may have a chilling effect on callers who do not choose to disclose the calling number. Dialing three additional digits to invoke privacy as is required with automatic per call blocking is much less cumbersome to the caller than having to connect to a live operator and explain that the caller wishes to place an anonymous call. The practical effect of a system of operator assisted blocking appears to be that privacy is not invoked, based on the Canadian experience wherein out of one million calls, only two were blocked.[27] We also note that live operator assisted blocking was not envisioned as part of the technology of caller ID during the SS7 standards setting process. The ANSI and Bellcore standards contemplate automatic per call or per line blocking. If the advanced technology of the network is capable of sustaining an automated blocking function, it is not in the public interest to ignore the technology and require less efficient, more cumbersome live operator assistance.

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[27] *See Bell Canada – Introduction of Call Management Service,* Telecom Decision CRTC 90-10 (May 9, 1990). The Canadian Radio-television and Telecommunications Commission now requires free automatic per call blocking; Bell Canada has discontinued free operator assisted per call blocking. See *Call Management Service – Blocking of Calling Number Identification*, Decision CRTC 92-7 (May 4, 1992).

45. *Automatic Per Call Blocking*. Under this approach, a caller dials a three digit code, e.g. *67 (or 1167 for rotary or pulse-dialing phones), to indicate that the calling number should be blocked. The majority of commenters supporting a per call blocking system advocate an automatic free per call method. For example, the Ad Hoc Users and NTIA state that per call blocking best balances the privacy interests of both the calling and the called party. Although Bell Atlantic opposes blocking, it states that if the Commission decides to require blocking, per call rather than per line should be adopted. The IIA notes that several states already require free per call blocking. Further, IIA proposes that the Commission take into account that consumer expectations have solidified on this issue.

46. We agree with the majority of commenters that availability of automatic per call blocking best addresses the privacy needs of both the calling and called parties. We note that the majority of jurisdictions using this method on a local basis are using *67 (or 1167 for rotary or pulse-dialing phones) as the dialing digits and we adopt the same dialing method in our interstate rules. As discussed in the NPRM, a regulatory approach to privacy should not be so burdensome to the service that it destroys its value and thus fails to take into account the privacy needs of the called party. Per line blocking has this effect. On the other hand, a blocking mechanism should not be so difficult to invoke as to fail to recognize the legitimate privacy concerns of some callers. Operator assisted blocking has this effect. The best balance for the competing interests of the calling and called parties is automatic per call blocking. The option of dialing a few additional numbers to invoke privacy when privacy is sought is a beneficial service that should be available to consumers. Similarly,

caller ID is beneficial to the called party who should be able to receive the calling party number in all instances where identification of the calling number is of no consequence to the caller or where the caller may desire identification.

47. The rules require per call blocking as the model for privacy protection on interstate calls. As a matter of simplicity and uniformity, per call blocking allows callers to travel from phone to phone and make an informed privacy decision. Per line blocking may create caller confusion when a caller places a call from a phone over which the caller may be uncertain whether it is equipped with per line blocking. It appears that some carriers offering per call unblocking together with per line blocking use the same *67 code both for unblocking presubscribed privacy lines and for blocking lines that are not pre-blocked. Thus, a caller may inadvertently disable privacy protection by dialing *67 (or 1167 for rotary or pulse-dialing phones) to invoke privacy from a phone that is already subscribed to per line blocking. A per call blocking system avoids this unintended result and allows callers to make decisions according to the unique calling circumstances of each call. Automatic per call blocking is easily used on a ubiquitous interstate basis, and eliminates customer confusion.

48. Our objective in this proceeding is to establish federal policies governing the passage by carriers of CPN on interstate calls. We believe carriers should provide callers the option of withholding their numbers from called parties on a per call basis. It is important to note, however, that consumer choice is not limited to the options provided by carriers. Various companies have registered with the Commission, under provisions of Part 68 of our rules, equipment that, for example, automatically would insert a blocking prefix on each

call going out over a particular line. Such devices are available for as little as $40.00 per unit. We believe general interstate passage of CPN throughout the telephone network, except in those individual circumstances where privacy is important to the calling party, promises important efficiency and productivity gains for our economy. However, individuals wishing to install these devices and thereby screen all originating interstate calls may elect to do so.[28] Such a choice may create caller confusion if others entitled to use the line are unaware of the purpose of the device, or may place health and safety at risk if the device conceals the calling party's location or identity from emergency services, but these are not harms to the network. Requiring callers seeking universal blocking to purchase such devices, however, ensures this choice is not made lightly.

49. The majority of commenters supporting per call blocking also propose that per call blocking be free to the calling party. We note that this is in keeping with the blocking policies adopted by the majority of states for intrastate calls. Per call blocking capability is an inherent capability of SS7 technology. The design of caller ID contemplates the use of software programs that permit either a customer to activate a "block" on any particular call, or the central office to activate a block on the line. In no circumstance is the information actually "blocked" from the carrier; the terminating central office will receive the calling number. In addition, on all

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[28] The policy underlying Part 68 registration of customer premises equipment is that consumers should be able to attach to the telephone network devices they find to be privately beneficial that are not publicly detrimental, in other words, that do not cause harm to the network.

interstate calls handled by SS7, the call setup message contains a calling party number parameter that includes a privacy indicator. Under our rules, this "privacy flag" travels with the call setup message through to the destination central office of the terminating carrier. Thus, there are no significant additional SS7 costs associated with per call blocking. Several commenters note that there are costs associated with populating the privacy flag at the originating end and reading it and passing it on to the subscriber at the terminating end. Our requirement that carriers transmit CPN includes the provision of per call blocking capability at the originating end and of facilities that read and honor the privacy indicator at terminating end. Any blocking costs can be readily absorbed because the calling party number and privacy flag are integral elements of SS7. Moreover, we find that charging the caller for per call blocking beyond the costs of deploying SS7 would disrupt the balance that per call blocking establishes between the privacy interests of the caller and called party. Charging for per call blocking heightens the burden upon the caller to invoke privacy and does not appear to be necessary for the overall viability of the service.

50. *Applicability to Additional Services.* In addition to calling party number delivery, SS7 technology permits delivery of calling party name via an optional parameter that is separate from the calling party number parameter.[29] We tentatively conclude that our policies for calling party number delivery should apply equally to services delivering calling

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[29] State public utility commissions in Texas and Minnesota have approved calling party name and number delivery services. *See* National Association of Regulatory Utilities Commissioners Bulletin, May 24, 1993 and July 26, 1993.

party name, and we seek comment on this tentative conclusion. Commenters should address any differences that may exist in the privacy considerations that apply to calling party name delivery as opposed to calling party number delivery. Commenters should also address whether the policies for subscriber privacy should extend to other services, such as services that permit subscribers to automatically return calls or to selectively forward calls.

F. ANI and Caller Privacy.

51. In the NPRM the Commission noted that interstate ANI, or its SS7 equivalent "charge number" parameter, already identifies the billing number of a call to interstate subscribers of ANI service, and is used by the LECs and IXCs for billing purposes. IXCs, however, sometimes deliver ANI to 800 and 900 service subscribers via a dedicated line. The NPRM requested comment on whether there are privacy interests associated with the transmission of ANI to 800 and 900 service subscribers or information service providers, and if so, what approaches should be considered to address the issue. The Commission noted that one possible approach would be to require businesses to obtain the consent of the caller before revealing the caller's telephone number to any third party. In this order we adopt such an approach.[30]

52. The majority of commenters conclude that it is not technically feasible to block identification of ANI-based interstate calling number in the same way as SS7-based calling party number because it is the billing number that LECs must provide to IXCs. Allnet proposes that LECs be required

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[30] *Id.* at para. 29 and n. 49.

to provide a privacy indicator with ANI. AT&T notes that ANI or the SS7 equivalent "Charge Number" do not currently have a privacy indicator that would signal the terminating carrier to block the passing of the billing telephone number to the called party. AT&T concludes that blocking requirements adopted by the Commission should not extend to the delivery of ANI. Nynex notes that under its SS7 interconnection tariff, in those cases where the billing number and the CPN are the same, the calling party number parameter will provide the billing number and the charge number will not be sent. Nynex adds that, where there is a difference between the billing number and the calling party number, the charge number parameter will provide the billing number.

53. Citicorp contends that proposals to limit the use of ANI are contrary to the Communications Act's purpose of promoting new telecommunications technologies. Illinois CC states that ANI is needed to promote competition, and to restrict the use of ANI in any way would undermine this policy goal. Ad Hoc Users, ARINC, and Citicorp identify many beneficial uses of ANI transmission.[31] Ad Hoc Users

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[31] Ad Hoc Users states that such applications include giving immediate medical assistance data to technicians who have been called by patients with pacemakers, use of ANI by investment firms as a check against fraud, use of ANI to process orders for pay-per-view cable television, routing of callers to specialized agents or announcements, business to business automated ordering and ANI-based employee dispatching. ARINC states that many airlines use ANI via their 800 service reservations networks to provide better service to regular customers, to verify telephone billings, to route calls among reservation centers, to detect fraud and to identify threatening calls. Citicorp notes that ANI can be used for customized customer services, telephone banking and home shopping, saving unnecessary holding time, retrieval of a customer's prior transactions, service representative calling back when a customer is cut off, and triggering letters to poll customers to determine deficiencies of service.

adds that these significant benefits are unfairly characterized by NYS Law as a "plague of unsolicited marketing calls." It notes that prohibiting transmission of ANI would shut down existing ANI applications and would not allow new applications until SS7 interconnection of LECs with IXCs is almost ubiquitous.

54. IIA states that because the transmission of ANI cannot be blocked, the focus must shift from whether the called party receives it to how the recipient uses the data. It states that questions presented by use of ANI data are transitional and ANI subscribers can be expected to migrate to SS7-based caller ID. In the meantime, IIA proposes the Commission rely upon voluntary and industry initiated efforts to explain to consumers how information about them is gathered and used. NARUC argues that denying commercial ANI purchasers the information ANI provides will give carriers an incentive to expedite development of CPN based services. Baer, Colorado DVC, Consumer Action, Michigan PSC, and others suggest that if the Commission allows for either per line or per call blocking, then it should also restrict the availability of ANI exclusively to LECs and IXCs. NTIA recommends that the Commission direct interested carriers and manufacturers to report on the modifications needed to implement caller blocking of ANI to the called party and formulate a plan for so modifying existing ANI over a period of years. Sprint concurs that ANI should be subject to privacy indicators, insofar as technology permits.

55. Unlike the privacy indicator that can be placed on the calling party number with respect to caller ID, the calling party cannot place a privacy flag on ANI or its SS7-based equivalent, the charge number parameter. Therefore, some parties suggest that the availability of ANI be restricted

exclusively to LECs and IXCs, and should not be passed on to 800 and 900 service subscribers for billing, routing, or other purposes.[32] Other commenters respond, however, that ANI is needed to sustain beneficial services currently offered.

56. We conclude that the public interest would be served by continuing to permit telephone companies to deliver ANI to 800, 900, and other business subscribers who pay for transmission of the call. ANI has been available to these end users without a privacy mechanism for several years and, as indicated above, has spurred a multitude of beneficial applications. While we are concerned that callers' reasonable expectation of privacy not be violated, we do not believe that the public would be served by terminating all access to ANI by subscribers to 800 and 900-type services. Ad Hoc Users points out that ANI service permits the receipt of calling numbers in real time but would not usually provide information beyond that which such subscribers will receive in any event on their telephone company bills because the called party pays for the call. It states that such realtime provision of ANI benefits calling parties by permitting a number of substantial customer service enhancements.

57. In weighing these various public interest concerns, we are aware that the continued deployment of SS7 throughout the telephone networks makes available a blockable alternative to ANI.[33] However, where the called party pays for the interstate call (*e.g.*, 800 and 900 service subscribers), the situation is somewhat analogous to a collect call regarding

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[32] *E.g.*, Baer, Colorado DVC, Consumer Action, Michigan PSC.

[33] In an SS7 environment, if the calling party number and the charge number of a telephone subscriber are identical, the CPN and its associated privacy indicator may be used for billing purposes. *See* Nynex at 5, n. 3.

expectations of confidentiality by the calling party. We believe the best approach is to require education by the carriers (see Section G, *infra*) and to restrict how 800 and 900-type service subscribers may use ANI data. Resale of the ANI number to create marketing lists or other information about callers without their consent has generated much of the opposition to the availability of ANI. Bills to restrict such practices have been introduced in Congress and commenters in this proceeding have addressed the implications of unrestricted availability of information about callers. Colorado DVC, NTIA, and others urge the Commission to prohibit the resale or use of ANI for uses other than call management, billing, or customer services employed directly by the subscriber to ANI end user services. To address these privacy concerns, we prohibit the reuse or sale of ANI information by 800, 900, and other service subscribers absent affirmative subscriber consent. We permit the use of ANI for call management and routing functions.[34]

58. Concerns also have been expressed regarding the use of ANI by 800 and 900-type service subscribers for solicitation. For example, ANI can be used to place return calls to telephone customers who previously have contacted an ANI 800 or 900-type services subscriber. In this regard, Nynex proposes that use of ANI be limited to performing and verifying transactions requested by the caller. ARINC, on the other hand, argues that such a restriction would diminish too severely the value of ANI for businesses and customers. We

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[34] *See* Appendix C, Section 64.1602. *See also* 47 C.F.R. Section 64.1504(c) (prohibits use of 800 service to provide information services unless the calling party has a "presubscription or comparable arrangement" with the information provider).

conclude that an ANI services subscriber may use ANI to offer products or services to an established customer that are directly related to products or services previously provided by the ANI services subscriber to that customer.[35] ANI services subscribers may also wish to compile ANI information in an aggregate form, either to improve operations or as a marketing tool. Our rules permit disclosure of ANI information in aggregate form if it is compiled in a manner which precludes identification of individual telephone subscribers.[36]

G. Subscriber Education, Further Notice of Proposed Rulemaking.

59. In the NPRM, the Commission stated that carriers offering calling party number, or facilitating transmission of interstate caller ID, should be required to inform callers of the availability of the service, including instructing callers how to implement any caller privacy mechanisms.[37] The Commission noted that no segment of the calling public can adequately control dissemination of the calling number under any regulatory structure if they are unaware that their calling number is being identified.[38] The majority of commenters agreed that

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[35] The Commission's rules implementing the Telephone Consumer Protection Act of 1991 (TCPA) prohibit calls by a telephone solicitor to residential telephone subscribers who have asked that they receive no solicitation calls from that person or entity. We emphasize that these rules apply where the telephone numbers of residential subscribers are obtained via caller ID, ANI or charge number services. See Section 64.1200 of the Commission's rules.

[36] *See* Section 64.1602, Appendix C.

[37] NPRM at para. 23.

[38] *Id.*

subscriber education is in the public interest and should be implemented with the introduction of interstate calling party number based services, including caller ID. Commenters also expressed concern over the education of callers whose numbers are identified via ANI-based services.

60. We affirm our tentative conclusion that deployment of interstate calling party number services should be accompanied by consumer education regarding the availability of identification services and how to invoke the privacy protection mechanism. The record indicates that consumer information is essential to public understanding of any privacy mechanisms associated with caller identification services. Accordingly, we amend our rules to require that carriers participating in the offering of services that deliver calling party number, including ANI or charge number, on interstate calls must notify their subscribers that their telephone numbers may be transmitted to a called party.[39] In addition, such carriers must inform their subscribers of the privacy mechanism available on interstate calls, and must explain how subscribers can activate the privacy mechanism. Even though the ability of the caller to activate a privacy flag is not yet ubiquitous on calls to ANI or charge number services subscribers, ANI or charge number services increasingly are offered through SS7 networks, and an education effort will be most effective if it anticipates the greater availability of a privacy flag. For ANI or charge number services for which such privacy is not provided, the notification must inform telephone customers of the restrictions on the reuse or sale of subscriber information. We specifically request further comment on whether we should prescribe detailed instructions

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[39] *See* Section 64.1603, Appendix C.

regarding what form education should take or prescribe more precisely responsibilities of various carriers.[40] We are particularly interested in specific joint industry education proposals (see comments of IIA, *supra,* para. 54).

H. CPNI and Subscriber Privacy.

61. Privacy issues are also raised by telephone companies' use of customer proprietary network information, or CPNI.[41] The Commission's current CPNI rules govern the BOCs' use of CPNI in marketing enhanced services and CPE.[42] The CPNI rules are designed to balance considerations of customer privacy, efficiency, and competitive equity. In recent months, however, the communications industry has

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[40] Pacific Bell has expressed concern in *ex parte* comments to Commission staff that subscriber education requirements imposed by the state of California as a condition to the introduction of intrastate calling party number based services, like caller ID, are so burdensome to preclude, as an economic matter, offering of caller ID services in California. The record in this proceeding is not sufficient to resolve this issue. Carriers may present issues of state regulation of interstate service to the Commission for consideration under the standards set forth in *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355 (1986). *See also* para. 70, *infra.*

[41] CPNI encompasses any information about customers' network services and their use of those services that a telephone company possesses by virtue of its provision of network services. *See* Filing and Review of Open Network Architecture Plans, 4 FCC Rcd 1, 215 (1988).

[42] *See Computer III* Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 7571, 7605-14 (1991) (enhanced services CPNI rules); Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, 2 FCC Rcd 143, 152-153 (1987) (CPE CPNI rules). These rules do not apply to independent LECs.

witnessed large local exchange carriers' planning and entering into alliances, acquisitions, and mergers with non-telephone company partners.[43] In this changing environment, access to CPNI among affiliated companies may heighten concerns. Thus, we will seek further comment from the public on whether the existing CPNI safeguards will adequately meet customers' reasonable privacy expectations in the future. The CPNI rules are currently under reconsideration in the Computer III Remand Proceeding, and the privacy concerns related to CPNI are more appropriately addressed in that proceeding. Therefore, we are releasing a public notice in CC Docket No. 90-623 seeking further comment, particularly on the issue of residential and small business customers' CPNI-related privacy concerns.

I. Wiretap Statutes and Caller ID.

62. In the NPRM, the Commission noted that some parties suggest that caller ID may violate the Federal Wiretap Act (Wiretap Act), 18 U.S.C. §§ 3121-3127 or the Electronic Communications Privacy Act (ECPA), 18 U.S.C. § 2511.[44] Colorado DVC, DC OPC, NASUCA, and Ohio OCC reiterate this contention. Other commenters such as Allnet, Bell Atlantic, Ameritech, and AT&T argue that caller ID is permissible under ECPA or the consent provisions of the Wiretap Act as "trap and trace" devices. Pacific adds that caller ID is not the type of activity that Congress intended to include in ECPA.

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[43] *See, e.g.*, BellSouth's agreement in principle to acquire an interest in Prime Management Co.; US West's $2.5 billion investment in Time Warner Entertainment Co.; and NYNEX's agreement to invest $1.2 billion in Viacom.

[44] NPRM at paras. 24-26.

Pacific points out that trap and trace laws are designed to prevent surreptitious wiretaps by the police and other parties and caller ID is not such a wiretap because it is a tariffed service offered uniformly and publicly to all customers.

63. In accordance with its statement in the NPRM that it would solicit the views and analysis of the Department of Justice, the Commission's General Counsel requested the Department of Justice's opinion on the issue. In its reply memorandum, the Department of Justice (DOJ) concludes that the federal wiretap statutes embodied in the Federal Criminal Code do not pose a barrier to interstate caller ID service. We adopt the Department's analysis and conclusions on this issue, and are incorporating the Department's memorandum into this Report and Order. *See* Appendix D.

J. Relationship between Interstate and Intrastate Caller ID.

64. In the NPRM, the Commission sought comment on whether state policies concerning calling party number based services, including caller ID, negate or hinder the development of interstate caller ID, ANI, or both.[45] In analyzing whether interstate and intrastate models may coexist harmoniously both legally and technologically, the Commission did not propose to preempt any specific state regulation governing intrastate caller ID. Rather, we found that it is necessary to review existing state policies individually in order to determine whether preemption is necessary.[46] Many commenters,

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[45] NPRM at para. 34.

[46] *Id.* at para. 30.

including AT&T, GTE, and MCI, propose that the Commission use its authority to preempt the states if state regulations impede interstate caller ID offerings. Pacific concurs that the Commission may preempt state regulation of caller ID because the service is not separable into interstate and intrastate portions and state regulation frustrates a valid federal policy.

65. Some commenters, including Ameritech, Sprint, Bell Atlantic, and BellSouth, contend that the terminating carrier should be required to honor any blocking indicators that are present on interstate calls on a per call basis. BellSouth proposes that the Commission should defer to each state's determination of blocking options available for calls originating in that state. Some commenters, including Colorado DVC, Connecticut, and Consumer Action, concur that the Commission should defer to state policies on blocking because state regulators are more attuned to local factors including history, culture, custom and legal environment. State commenters, including Indiana Utility Counsel, Illinois CC, and Missouri PSC, contend that preemption is unwarranted and untimely because states should be able to develop standards that provide more, but not less privacy protection to consumers. NARUC argues that preempting state caller ID policies is inappropriate from both a legal and policy perspective. NARUC proposes that the Commission devise a plan that carries out federal objectives but can substantially coexist with various state blocking plans. Some commenters concur with NARUC and contend that federal and state rules can coexist.

66. Many commenters, including AT&T and Pacific, contend that existing technology renders it infeasible for carriers to comply with one set of blocking requirements for

intrastate and a different set of standards for interstate caller ID. Allnet, NTI, and Bell Atlantic contend that privacy standards should apply to intrastate, interstate and international communications and that different standards would require more complex equipment. Specifically, Bell Atlantic asserts that substantial development and expense over several years would be necessary to accommodate differing interstate and intrastate standards.

67. Nynex, USTA, and SNET contend that different state and federal policies on caller ID create caller confusion, and that a uniform national policy for caller ID would minimize consumer confusion. The California PUC proposes that the Commission, if it allows interstate caller ID, should not preempt more restrictive state privacy protections adopted for intrastate caller ID, and instead should defer to the more restrictive requirements in each of the states.

68. As is discussed in Section A, *supra*, interstate passage of calling party number serves the public interest by making it possible for telecommunications service providers to offer beneficial new communications services that directly and indirectly can increase the business sector's efficiency and residential customers' access to information and other services. In this proceeding we will require carriers having SS7 capability to transmit CPN to interconnecting carriers. Recognizing that there may be situations in which the calling party wishes to preserve privacy, we establish *67 (and 1167 for rotary or pulse-dialing phones) as the mechanism by which this may be done on interstate calls. Carriers must honor a caller's choice to use this blocking mechanism. These policies strike a reasonable balance among significant competing interests, including reasonable privacy expectations and economic growth. Our approach ensures that the privacy

rights of the caller are not unreasonably infringed upon by the policies of the state where the call terminates (in those states offering unlimited caller ID a blocking request from another state might not otherwise be honored) nor are the concerns of the called party unreasonably infringed upon by the policies of the state where the call originates (unqualified, free per line blocking likely would significantly increase the number of blocked interstate calls).

69. We are sensitive to states' interests in protecting the privacy of their residents, but note that limited preemption of state regulations is necessary in some instances to ensure that our goal of facilitating the development of interstate calling party number based services is not frustrated by inconsistent state law, and that state decisions with respect to caller ID or other calling party number based services do not infringe upon the privacy interests of parties in other states.[47] Accordingly, we preempt state regulation of caller ID or other calling party number based services as follows: states may not prohibit automatic per call blocking for interstate calls, require a blocking alternative for interstate calls different from the one adopted in this proceeding, or prohibit the offering of interstate caller ID services. Thus, states may not prohibit carriers from offering interstate services based on calling party number, including caller ID service. States will not be able to

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[47] *See City of New York v. FCC*, 486 U.S. 57 (1984); *Capital Cities Cable, Inc. v. Crisp*, 467 U.S. 691 (1984). We conclude that the fact that the federal wiretap statutes do not, as a matter of federal criminal law policy, preempt states from adopting greater privacy protection measures, *see United States v. Capra*, 501 F.2d 267, 276 (2d Cir. 1974), *cert. denied*, 402 U.S. 990 (1975); S. Rep. No. 1097, 90th Cong., 2d Sess. 93 (1968), does not affect our authority to preempt as a matter of federal communications policy.

require the use of digits other than *67 (or 1167 for rotary or pulse-dialing phones) for automatic per call blocking on interstate calls, nor require carriers offering or participating in the interstate transmission of calling party number to provide blocking systems that interfere with the use of *67 (or 1167 for rotary or pulse-dialing phones) to achieve blocking. Preemption is necessary in these cases to ensure that state regulations do not interfere with the achievement of important federal objectives, and with the Commission's exclusive jurisdiction over interstate communications.[48]

70. To the extent that inconsistent regulations cannot be accommodated simultaneously for interstate and intrastate caller ID services, some further preemption of state regulations may become necessary.[49] We will examine the need for such additional preemption on a case-by-case basis. For example, there may be cases in which state caller ID requirements applicable to intrastate calls would, as a practical matter, make it impossible for carriers to implement per call blocking for interstate calls. We are reluctant to preempt state authority over intrastate communications, and will endeavor to accommodate state regulations whenever possible. State policies, however, must not frustrate the paramount federal interest in a cohesive interstate communications policy, and must not be allowed to infringe unreasonably upon the privacy interests of the citizens of other states.

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[48] We note that the Department of Justice memorandum, which also addresses preemption issues, is consistent with our analysis of preemption. *See* Appendix D at 9-13.

[49] *See generally, Louisiana Public Service Comm'n v. FCC; NARUC v. FCC*, 880 F.2d 422 (D.C. Cir. 1989). *See also* para. 60, n. 38, *supra.*

III. CONCLUSION

71. Our goal in this proceeding is to establish a federal policy to govern the passage of calling party number among carrier networks. In this order we find that a federal model for interstate delivery of calling party number is in the public interest, that the model must protect calling party privacy, and that certain state regulations of interstate caller ID must be preempted. Accordingly, we amend Part 64 of the rules to require that common carriers using Common Channel Signalling System 7 (SS7) and subscribing to or offering any service based on SS7 functionality must transmit CPN and its associated privacy indicator on interstate calls. We require that carriers offering CPN based services provide automatic per call blocking at no charge to interstate callers, and that the privacy indicator be honored by terminating carriers. We find that the costs of interstate transmission of CPN are *de minimis*, and that the CPN should be transmitted among carriers without additional charge. We require that carriers participating in the offering of any service that delivers CPN on interstate calls must inform telephone subscribers regarding the availability of identification services and how to invoke the privacy protection mechanism. We also seek comment on whether more specific subscriber education requirements should be imposed. We restrict the reuse or sale of telephone numbers by subscribers to automatic number identification (ANI) or charge number services. We note that additional comments are sought in the *Computer III* Remand Proceeding on whether residential and small business customers' privacy concerns warrant revision of the Commission's rules governing reuse and sale of customer proprietary network information (CPNI). Finally, we seek comment on extending the

policies adopted herein to other services that might identify the calling party.

72. We expect the rules and policies adopted herein will support the efforts of carriers, standards setting bodies, states, CPE manufacturers, and others in providing CPN-dependent services in an efficient manner. In this federal model, we recognize the value and benefits to the public of interstate CPN services, we promote the transmission of the calling party number from the originating carrier to the terminating carrier, and we balance the reasonable privacy expectations of both the calling and the called party. The rules we adopt to govern services such as interstate caller ID service remove obstacles to their development posed by uncertainty and non-uniform state policies and should facilitate implementation of new and beneficial interstate services.

IV. PROCEDURAL MATTERS

73. *Ex Parte Rules – Non-Restricted Proceeding.* The Further Notice of Proposed Rulemaking is a nonrestricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

74. *Final Regulatory Flexibility Analysis:* Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 601 *et seq.*, the following final analysis has been prepared:

I. Need for and objective of the rules:

This Report and Order adopts policies governing the transmission of the calling party number parameter and its associated privacy indicator on interstate calls. Several commenters to the NPRM in this proceeding have identified a number of potential uses for interstate calling party number based services, including caller ID, and have indicated that it also will improve certain existing communication service offerings. We find that the potential benefits of interstate passage of calling party number far exceed any negative effects. We thus adopt the conclusion reached in the NPRM that interstate caller ID and other calling party number based services are in the public interest and should be available to interstate subscribers nationwide pursuant to the policies and rules set forth in this order.

II. Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered:

The NPRM in this proceeding requested comments on several proposals as well as the views of commenters on other possibilities. The Commission has considered all comments and has proposed regulations which require the passage of calling party number where SS7 is deployed, facilitate interstate calling party number based services, including caller ID, and implement federal policy on privacy.

75. *Initial Regulatory Flexibility Act Analysis on the Further Notice of Proposed Rulemaking*

An Initial Regulatory Flexibility Analysis is contained Appendix A to this Report and Order and Further Notice of Proposed Rulemaking.

76. *Comment Dates*

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before May 18, 1994 and reply comments on or before June 21, 1994. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting documents with the reference number "CC Docket 91-281" on each document. If interested parties want each Commissioner to receive a personal copy of comments, interested parties must file an original plus nine copies. Interested parties should send comments and reply comments to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street, N.W., Washington, DC. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 2100 M Street, N.W., Suite 140, Washington, DC 20037, (202) 857-3800.

V. ORDERING CLAUSES

77. Accordingly, It Is Ordered, that, pursuant to authority contained in Sections 1, 4(i), 4(j), 201-205 and 218, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 218, Part 64 of the Commission's Rules and Regulations ARE AMENDED as set forth in Appendix C hereof, effective April 12, 1995.

78. It Is Further Ordered, that, pursuant to authority contained in Sections 1, 4(i), 4(j), 201-205 and 218, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 218, Further NOTICE OF PROPOSED RULEMAKING is hereby provided as indicated above.

79. It Is Further Ordered, that, the Secretary shall cause a summary of this *Report and Order and Further Notice of Proposed Rulemaking* to be published in the Federal Register which shall include a statement describing how members of the public may obtain the complete text of this Commission decision. The Secretary shall also provide a copy of this *Report and Order Further Notice of Proposed Rulemaking* to each state utility commission.

80. For further information regarding this Report and Order and Further Notice of Proposed Rulemaking, contact Suzanne Hutchings, Common Carrier Bureau, Domestic Facilities Division, (202) 634-1802.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

Acting Secretary

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: Rules and Polices Regarding Calling Number Identification Service – Caller ID (CC Docket No. 91-281)

In this *Report and Order*, the Commission finds that a federal model for interstate delivery of a calling party number (CPN) is in the public interest, that calling party privacy must be protected, and that certain state regulation of interstate caller ID must be preempted. Accordingly, the Commission amends its rules to require that: (1) common carriers using Signalling System 7 (SS7) and subscribing to or offering any service based on SS7 functionality must transmit the CPN and its associated privacy indicator on an interstate call to connecting carriers; (2) carriers offering CPN delivery services provide, at no charge to the caller, and automatic per-call blocking mechanism, *67, for interstate callers; (3) terminating carriers providing CPN delivery services, including caller ID, must honor the *67 privacy indicator; and (4) carriers participating in services that deliver CPN on interstate calls must inform telephone subscribers that the CPN may be revealed to called parties and educate customers about how to obtain privacy. The Commission also adopts rules to address privacy concerns raised by the reuse or sale of information generated by automatic number identification (ANI), and seeks additional comment on whether the privacy concerns by residential and small business customers warrant revising the Commission's rules governing the reuse and sale of customer proprietary network information (CPNI). Finally, the Commission adopts a *Further Notice of Proposed Rulemaking* to solicit comment on (1)

whether the Commission should prescribe more precise educational requirements, and (2) whether and how the policies adopted on caller ID should be extended to other identification services, such as caller party name or CPNI.

I support this action because I believe that it balances the primary public policy considerations in this proceeding regarding how to facilitate the interstate transmission of CPN through services including caller ID while offering individuals an opportunity to protect their privacy. I write separately on this issue to underscore that the Commission must monitor the extent that the implementation of these rules effectively mitigates the confusion created by the varying state practices regarding the transmission of CPN and associated blocking procedures for intrastate calls. Admittedly, the Commission's actions will not explicitly preempt states on intrastate practices, but I am concerned that the combination of the federal policy for interstate calls and various intrastate practices may require some education for consumers. Accordingly, I believe that the *Further Notice* is an appropriate step toward prescribing more precise educational requirements, if necessary.

I also am interested in how states will resolve situations where: (1) states currently lack privacy capability, and will have to provide some equipment; and (2) states currently use per-line blocking for intrastate calls and will have to accommodate *67 blocking capability. I believe that the federal policy adopted today by the Commission is a minimally intrusive measure given the variety of state practices, and may manage the level of confusion for consumers most effectively compared to alternative approaches. Nonetheless, I will be interested in reviewing the practical effect of these rules.

MEMORANDUM OPINION AND ORDER ON RECONSIDERATION, SECOND REPORT AND ORDER AND THIRD NOTICE OF PROPOSED RULEMAKING, 10 FCC RCD 11700 (1995)

Before the
FEDERAL COMMUNICATIONS COMMISSION
FCC 95-187
Washington, D.C. 20554

In the Matter of	)	
	)	
Rules and Policies Regarding Calling Number Identification Service – Caller ID	)	**CC Docket No. 91-281**
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MEMORANDUM OPINION AND ORDER ON RECONSIDERATION, SECOND REPORT AND ORDER AND THIRD NOTICE OF PROPOSED RULEMAKING

10 FCC Rcd 11700

Adopted: May 4, 1995 Released: May 5, 1995

Comment Date: June 30, 1995
Reply Comment Date: July 28, 1995

By the Commission: Commissioner Barrett issuing a statement.

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I. INTRODUCTION

1. In this proceeding, we address petitions for reconsideration of our decision in Rules and Policies regarding Calling Number Identification Service – Caller ID.[1] We also address comments filed in response to the Further Notice of Proposed Rulemaking in the same docket.[2] Finally, we issue a

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[1] *Rules and Policies Regarding Calling Number Identification Service – Caller ID,* Report and Order and Further Notice of Proposed Rulemaking, 9 FCC Rcd 1764 (1994) (hereinafter referred to as Report and Order or Order).

[2] *Id.*

Third Notice of Proposed Rulemaking to resolve issues raised by Private Branch Exchange (PBX) telephone systems and private payphones.

2. In the *Report and Order*, the Commission found that passage over interstate facilities of the number of the telephone from which a party called made possible a wide range of services and, thus, promoting development of such services is consistent with the Commission's responsibilities under Sections 1 and 7 of the Communications Act. Specifically, the Commission found passage of the calling party's number, or CPN, could bring consumers rapid and efficient service and encourage the introduction of new technologies and services to the public.[3] In particular, the Commission found that CPN could enable service providers and consumers to conduct transactions more efficiently. The *Report and Order* offered some examples to illustrate how this would be achieved: computer services could recognize the calling party's number and either permit, or deny, access. Stockbrokers, travel agents, parts and equipment providers, and booksellers could route a call to a preprogrammed location closer to the calling party to expedite deliveries or services. Retailers could verify credit and billing information instantaneously. Customized services that depend on the caller's individualized preferences could be developed. The Commission observed that even small efficiencies on individual transactions become significant in an economy that averages more than one billion interstate calling minutes a day. These savings could lower service costs for suppliers, leading to lower prices for consumers.[4]

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[3] *Id.* at para. 9.

[4] *Id.* at paras. 8-9.

3. The Commission identified other potential benefits, and beneficiaries, from passage of CPN over interstate facilities. These included the carriers with networks able to pass CPN, which benefit from greater use of their networks as new services are developed and as existing services become more attractive to suppliers and consumers. Carriers lacking the ability to pass CPN have incentives to install it to remain competitive with carriers having it. Entrepreneurs and employees benefit from new business and employment opportunities. None of these benefits – efficiency and productivity gains, infrastructure development and network utilization, or new service and employment opportunities – are possible unless CPN is passed among carrier networks.

4. For all these reasons the *Report and Order* established federal policies to govern the passage of the calling party number over interstate facilities. The Commission found the establishment of federal policies necessary because uncertainty created by their absence appeared to be impeding the development of potentially valuable interstate services, like those described in the preceding paragraphs. The two areas of greatest uncertainty identified by the Commission were (1) compensation issues related to passage of CPN for interstate calls and (2) varying state requirements intended to protect the privacy rights of calling and called parties on interstate calls.[5] In addition, concern that lack of federal policy and varying state policies created customer confusion influenced our decision to act.

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[5] *Rules and Policies Regarding Calling Number Identification Service*, Notice of Proposed Rulemaking, 6 FCC Rcd 6752, 6754 (1991) at para. 11 (hereinafter NPRM); Report and Order at para. 11.

5. As is explained below, we affirm our finding that common carriers, including Commercial Mobile Radio Service providers, with Signaling System 7 (SS7) call set up capability, must transport CPN on interstate calls without charge to interconnecting carriers. We clarify that we do not require carriers that do not have SS7 call set up capability to make the SS7 investments that would enable them to pass CPN. We modify our prior decision that carriers only provide privacy when a caller first dials *67. Specifically, we permit carriers to provide privacy on all calls dialed from a particular line where state policies provide, and the customer selects, that option, provided carriers permit callers to unblock calls from that line by dialing *82. Federal policy prohibits default per line blocking. Where state policies do not require or permit at the customer's election per line blocking, carriers are bound by the federal privacy protection model to provide privacy only where *67 is dialed. We require that hotel and motel lines comply with these policies as of the effective date of the new rules, December 1, 1995, while public payphones and partylines must comply with these policies by January 1, 1997. Additionally, we continue to exempt calls to emergency lines from our rules; that is, a carrier's obligation to honor caller privacy requests will be governed by state policies. We affirm our existing policies governing use of Automatic Number Identification, or ANI.[6]

6. Furthermore, we require that when a caller requests that the name of the subscriber to the line from which he is calling be concealed, a carrier may not reveal that name to the called party. With respect to other services that use CPN and might identify the calling party, we require that when a caller

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[6] *See infra* paras. 17-18.

requests privacy, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party. We continue to require that carriers with call set up capability that pass CPN or transmit ANI educate customers regarding how customers can control the passage of CPN and ANI to the party they are calling. Additionally, we issue a Notice of Proposed Rulemaking proposing (1) that PBX systems capable of delivering CPN to the public switched telephone network also be capable of delivering a privacy indicator when the user of a telephone served by the PBX dials *67 and be capable of unblocking the line by dialing *82 and (2) that private payphones be subject to our caller ID rules. Finally, we extend the date of December 1, 1995 by which carriers with SS7 call set up capability must comply with our rules relating to passage of CPN associated with interstate calls.[7]

II. BACKGROUND

A. Technology Advances Underlying CPN-Based Services

7. Historically, signaling information that enabled call routing and billing was transmitted through multifrequency in-band signaling on the same circuits used to connect the

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[7] On March 17, 1995 the Commission released an Order, *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, CC Docket No. 91-281, Order, FCC 95-119 (released March 17, 1995), staying the April 12, 1995 effective date of Sections 64.1601 and 64.1603 which had been established in the Report and Order.

calling and called parties.[8] Beginning in the 1980s, carriers worldwide began abandoning multifrequency in-band signaling in favor of out-of-band signaling. With out-of-band signaling, a packet network transmits signaling information on circuits separate from the circuits used to connect the calling and called parties. When compared to multifrequency in-band signaling, out-of-band signaling allows carriers to use their networks more efficiently. Efficiency gains are realized since carriers can set up and release calls more quickly. This increases the ratio of the time interoffice circuits are in use carrying a conversation to the time interoffice circuits are in the process of being connected or disconnected. Additionally, out-of-band signaling enhances flexibility in call handling and processing. It also avoids certain kinds of fraud that could be used with multifrequency signaling to defeat billing systems. The latest version of out-of-band signaling, deployed in carrier networks throughout the world, is Signaling System Seven, or SS7. A SS7 message conveys information presented in digital format to switches and other network elements. The message is organized into an agreed format that consists of parameter fields and subfields.

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[8] When a switch uses multifrequency signaling to establish a circuit connecting it to another switch, it outpulses sequences of tones representing the call set up information on the same circuit that is used to connect the calling and called parties. On all interoffice calls, the switch outpulses the address sequence, which contains the called party number. Depending on the circumstances, the switch may also outpulse the OZZ sequence and the ANI sequence. The OZZ sequence identifies the interexchange carrier and provides information about the call that is used to select the proper circuit. The ANI sequence contains the billing number for the party making the call and identifies the type of line (*e.g.*, POTS line, Coin Line, Hotel/Motel line) used to place the call.

8. The Commission addressed issues in the Report and Order that are raised by the presence of the CPN parameter field in a SS7 call set up message. CPN is an optional parameter of the "initial address message" or IAM,[9] an SS7 ISUP[10] message, which is included in most calls. The IAM is a collection of information critical to call routing and handling. Industry standards bodies strictly control the information that can be included in the IAM.

9. With multifrequency signaling, signaling information capable of identifying the calling party generally was not passed beyond the interexchange carrier (IXC), which used the information primarily for billing purposes. SS7, however, makes information identifying the calling party available to the terminating carrier. By making minor modifications to an individual's line, a terminating carrier is able to provide the calling party's number to a called individual between the first and second ring of the telephone. The individual merely needs to install a device (which may be incorporated into his or her telephone) to reveal the calling party's telephone number. This service to an individual receiving the calling party's number is often called Caller Identification Service or "caller ID."

10. The SS7 protocol anticipates that there may be occasions when the calling party does not wish to have the

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[9] The Initial Address Message (IAM) is contained in the ISDN User Part (ISUP) of the SS7 protocol. An IAM is the first SS7 message a switch transmits to begin establishing a circuit connection.

[10] ISDN User Part (ISUP) is a term defined by international standards bodies to describe a part of the SS7 protocol. The ISUP protocol defines the functions and signaling information to set up and release (*i.e.* disconnect) calls over circuit-switched connections.

CPN revealed to the called party. If a calling party dials *67 (or 1167 on a rotary phone), the switch recognizes this as a request for privacy and sets a privacy indicator within the SS7 message that will be used to set up the call. When a terminating switch receives an SS7 message with privacy requested, it will not pass the calling party number to the called party. Instead, the called party would receive a message that privacy has been requested.

11. Privacy may be achieved in ways other than by dialing *67. For example, carriers can modify a calling party's line so that the CPN on all calls from that line will be concealed, without the need for the calling party to dial *67. In addition, certain customer premises equipment may be used to dial *67 automatically on all outgoing calls.

B. Policies Adopted in the Report and Order

i. Passage of CPN

12. In the *Report and Order*, the Commission found that nearly all of the Bell Operating Companies now offer CPN as a nonchargeable option in their SS7 access tariffs. The American National Standard for Telecommunications – Signaling System Number 7 (SS7) – Integrated Services Digital Network, referred to as ANSI T1.113, 1988, includes CPN as an optional parameter of a SS7 network. Because CPN is an intrinsic part of SS7 call set up, and no cost is associated with "filling" the CPN parameter of the SS7 message, the Commission found the cost to transmit CPN for carriers having call set up capability is *de minimis*. The Commission concluded that carriers capable of transmitting call set up information should transmit CPN on interstate calls to interconnecting carriers without charge to those carriers. The Commission

believed this decision would resolve billing issues between local exchange and interexchange carriers that seemed to be preventing the passage of CPN on interstate calls.

ii. Privacy

13. The Commission recognized that passage of CPN could invade the privacy of calling parties wishing to remain anonymous. While the Commission recognized the privacy right of the called party to know who is calling, it found that the federal model governing passage of CPN should also offer the calling party a means of remaining anonymous. To craft a federal policy governing passage of CPN on interstate calls that protected the reasonable privacy expectations of both the calling and the called parties, the Commission looked at the rules adopted by state policy makers to protect the privacy of calling and called parties on intrastate calls and the rationales underlying the states' decisions.

14. The Commission found that states have not adopted a uniform policy in regulating intrastate CPN services such as caller ID. Some states do not require carriers to offer calling parties the ability to conceal their number, apparently believing that the called party's right to know who is calling is paramount. Some states require carriers to allow callers to invoke privacy by dialing *67. Some states not only require this, but also require carriers to offer at least some customers the option of blocking passage of CPN for all their calls, a service called "line blocking." States requiring carriers to offer line blocking differ in their definition of the subscribers to whom the carriers must offer this option. Some allow any subscriber to receive line blocking. Some limit its availability to groups with "special needs," such as law enforcement

agencies or abuse shelters. Some permit carriers to charge for line blocking, or only permit charges to specific categories of subscribers electing line blocking, such as persons who do not have an unlisted number. In some local networks, dialing *67 on a line that has been blocked by the carrier has the effect of unblocking the call, while in other networks, dialing *82 is necessary to unblock a line.[11] Some states prohibit blocking passage of CPN from payphones, but some require it, at least for certain payphones likely to be used by persons who are abused. Because states also revise their policies periodically, patterns different from those we have just described are also possible.

15. The Commission concluded that interstate callers should have a simple, uniform way of being assured privacy on an interstate call.[12] The Commission concluded that when interstate callers dial *67, their CPN should not be revealed to the called party. If they do not dial *67, interstate callers would then know that their number may be revealed to a called party equipped to receive CPN. The Commission found this to be a simple, uniform interstate policy that reasonably balances the privacy interests of calling and called parties. Carrier were prohibited from charging calling parties for providing this blocking capability and were ordered to educate consumers regarding how they can prevent their CPN from being revealed.

16. The Commission recognized that states' individual policies may, in some instances, be inconsistent with this federal model. The Commission therefore preempted state

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[11] Report and Order at para. 47; para. 53, *infra.*

[12] Report and Order at paras. 34 and 47.

regulation of services based on CPN, such as caller ID that: 1) prohibits the offering of interstate CPN-based services; 2) requires blocking alternatives on interstate calls different from those adopted by the Commission; or 3) requires blocking systems that interfere with the use of *67 to achieve blocking on interstate calls.[13]

iii. ANI Services

17. In the *Report and Order*, the Commission addressed issues raised by services that use ANI, which pass the telephone number to which a call is to be billed. Prior to the deployment of SS7, carriers would use multifrequency signaling to transmit ANI to IXCs. ANI's original purpose was to enable carriers to bill customers for calls they made. ANI, however, can also facilitate many of the services made possible by CPN because ANI identifies the calling party's billing number, which often, but not always, is the same as CPN.[14] Ordinarily, the IXC would not reveal ANI to the terminating local exchange carrier (LEC) or to called parties that the IXC served directly. As IXCs recognized its value to businesses for identifying customers, the carriers began offering ANI to those customers they served directly who were paying for the call, such as, subscribers to 800 service. Unlike CPN, carriers can not block delivery of ANI over multifrequency signaling networks. In SS7 networks, however, the charge number, which is equivalent to ANI in multifrequency networks, and the calling party number occupy different fields. Thus, the

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[13] *Id.* at para. 69.

[14] Typically, CPN and ANI are the same for residence telephone lines, while often in the case of business lines CPN and ANI are different.

SS7 protocol does permit the terminating carrier having call set up capability to know when the calling party wants privacy, because the CPN parameter field will indicate whether privacy is requested.

18. The Commission decided not to prohibit carriers from sharing ANI information with 800 service customers, even where a calling party requested privacy for his CPN.[15] It noted consumers' major concern about ANI services was reuse of the calling party information by 800 service customers. Accordingly, the Commission ruled that customer information gained from ANI services could not be reused or sold without the affirmative consent of the calling party. The only exception was that the information could be used to offer products or services to established customers where the products or services are directly related to products or services previously provided. Carriers providing ANI services are required to include these restrictions in tariffs or contracts that offer the services.

C. Matters Raised in the Further Notice of Proposed Rulemaking

i. Other CPN-Based Services

19. In the *Further Notice*, the Commission asked commenters to respond to the tentative conclusion that policies governing CPN delivery should also apply to services delivering calling party name. It also asked whether the policies

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[15] Report and Order at paras. 57-58.

should be applied to other services, such as automatic call return or selective call forwarding.[16]

20. Calling party name delivery provides the name of the customer in whose name the calling line is listed. When a called party subscribes to calling name service, the customer name associated with the calling line is delivered to the subscriber in the same manner as calling number. A subscriber's customer premise equipment (CPE) then displays the name associated with the calling line. To the end user customer, calling name and number services appear to work in a very similar manner.[17] From a network perspective, however, calling name delivery requires capabilities in addition to those used for calling number delivery. When a terminating switching office receives a call, it uses the CPN from the incoming call to determine the name associated with the calling line by accessing a remote data base through a TCAP[18] query or in limited cases by accessing a data base resident in the switch. As in the case of calling number, the switch then delivers the calling name to the called party during the ringing cycle.

21. Call return service allows a called party to return a call to a calling party by entering a feature code on the phone

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[16] *Id.* at para. 50.

[17] Calling name may be delivered by itself or with calling number depending on the carrier's service offerings and the customer's service selections.

[18] "TCAP" or Transactional Capabilities Application Part is also part of the SS7 protocol. The TCAP protocol defines the functions and signaling information supporting the exchange of information for non-circuit-related applications. For example, in 800 data base service, a switch uses a TCAP message to query a data base to determine routing information based on the 800 number the calling party has dialed.

(*e.g.* *69). For the service to function between switching offices, CPN must be present in the IAM and TCAP message capability must exist. When a customer invokes call return, the serving switching office will examine the contents of the incoming call memory slot[19] to determine the CPN of the last incoming call. If CPN is not in the memory slot, the customer receives a message that the call could not be returned. If CPN is in the memory slot, the serving switch launches a TCAP message to determine the status of the original calling party's line. If the line is idle, the serving switch will set up a call and notify the customer invoking the call return service that the call is being completed. At that point, call processing proceeds as though it were a normal call. Call return service goes by many different names (*e.g.*, Last Call Return, Auto Call Return, Return Call), but the basic operation of the service is the same.

22. There are numerous other CPN-based services such as Selective Call Rejection and Selective Call Forwarding. Commenters have suggested many other creative ways in which CPN may be used to develop new services.

ii. Education

23. In the *Report and Order,* the Commission recognized that subscriber education is in the public interest and should be implemented with the introduction of interstate

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[19] An incoming call memory slot is associated with each subscriber line. Incoming call memory slots reside in a switch's memory and contain information regarding the last incoming call for a particular line. This information may include the CPN of the last incoming call.

CPN-based services.[20] The Commission also noted commenters' concern that callers be told that their billing numbers are identified via ANI-based services.[21] Accordingly, the Commission concluded that carriers participating in the offering of services that deliver calling party number, including ANI or charge number, on interstate calls must tell their subscribers that their telephone numbers may be transmitted to a called party.[22] In the *Further Notice*, the Commission asked whether it should prescribe in detail the form this education should take or whether it should prescribe precisely the responsibilities of the various carriers transmitting the information.[23]

III. MEMORANDUM OPINION AND ORDER ON RECONSIDERATION

A. Transmission of CPN

i. Interstate CPN Transmission Costs

24. *Background.* In the *Report and Order*, the Commission affirmed its tentative finding that the unimpeded flow of CPN throughout the network fosters fullest development of CPN-based services.[24] It concluded that the cost to carriers of transmitting CPN on interstate calls is *de minimis* for access services using SS7 technology because SS7 standards include

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[20] Report and Order at para. 59.

[21] *Id.*

[22] *Id.* at para. 60.

[23] *Id.*

[24] *Id.* at para. 23.

CPN as an optional parameter for call set up.[25] Since carriers equipped with call set up capability do not need to make additional investments to be able to pass CPN, delivery of CPN would thus cause little incremental cost to carriers not currently recovered through tariffed offerings. The Commission amended its rules to require that not later than April 12, 1995, common carriers using SS7 and subscribing to or offering any service based on SS7 functionality transmit, without charge, the CPN parameter and the associated privacy indicator to connecting carriers on an interstate call.[26]

25. *Positions of the Parties.* Several IXCs petition the Commission to reconsider its decision to require carriers to transmit CPN without compensation from connecting carriers.[27] They argue that such a requirement: violates the Fifth Amendment because it unjustly deprives carriers of compensation for services;[28] is inconsistent with the Communications Act because it unlawfully precludes IXCs from filing tariffs that establish rates for the delivery of interstate CPN to terminating LECs;[29] and unfairly gives LECs a monopoly windfall because IXCs do not have the same opportunity as LECs to market CPN-based services.[30] Basic equity and fairness, they say, require that IXCs be able to charge for the delivery of CPN.[31] Sprint claims that while LECs correctly

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[25] *Id.*

[26] *Id.* at paras. 3 and 17; *see* note 7, *supra.*

[27] *See, e.g.,* AT&T Petition at 1-14; MCI Petition at 1-3; Sprint Petition at 1-13.

[28] *See, e.g.,* AT&T Petition at 10 n. 16.

[29] *See, e.g., Id.* at 8.

[30] *See, e.g., Id.* at 11; MCI Petition at 2.

[31] *See, e.g.,* MCI Petition at 3.

point out that IXCs do have direct access to customers on the terminating end for 800-type service and can provide caller ID type services to such customers, IXCs can do so only if the customer has a dedicated access arrangement.[32] MCI disputes the LEC claims that IXCs can simply raise their rates for existing services to recover CPN delivery costs.[33] Unlike the LECs, it says, IXCs operate in a competitive environment where prices are determined by marketplace forces. Accordingly, it says, rates for one service cannot be easily raised to recover the cost for another.

26. AT&T argues that the economic analysis underlying the Commission's "free passage" requirement arbitrarily ignores record evidence on IXC costs, is incomplete because it is based only upon a review of incremental costs, and is inconsistent with basic rules on cost allocation.[34] AT&T asserts that the Commission fails to take into account enormous expenditures that have been made by IXCs to develop and deploy SS7 technology to enable them to accept and deliver interstate CPN.[35] Furthermore, AT&T anticipates that fewer interstate calls will be completed once interstate caller ID is inaugurated, resulting in higher access costs for those calls actually completed. Ultimately, it says, the Commission's requiring free passage of CPN clashes with fundamental Commission policy favoring competition and will harm consumers by severely restricting IXCs' incentives to support

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[32] Sprint Reply at 4 n. 3; *see also* MCI Reply at 9-10.

[33] MCI Reply at 5.

[34] AT&T Petition at 3-8. AT&T estimated in an *Ex Parte* presentation that its annual interstate CPN delivery expense was $79.6 million dollars.

[35] *Id.* at 4-5.

feature-rich technology deployment in the future.[36] AT&T also argues that the "free passage" requirement precludes IXCs from filing tariffs that establish rates for the delivery of interstate CPN to terminating LECs. The Commission, it says, provided no notice that it was considering such a restriction.[37]

27. The LECs reject IXC arguments that free passage of CPN is unfair and gives LECs a monopoly windfall.[38] First, they say, the passage of CPN is not a service, nor is it dependent on IXC "property".[39] Instead, they argue, such passage is an aspect of fundamental common carriage – the delivery of the message as received from one carrier, unadulterated, through to the terminating carrier.[40] They say that IXCs have benefited from the LECs' free passage of CPN to them because the IXCs have been able to receive and use this information from the time carriers began to interconnect their SS7 networks several years ago.[41]

28. Bell Atlantic says that while it would not be impossible to set up a regulatory regime in which parties paid for bits of signaling information they received, doing so would not serve the public interest because it would delay service deployment and add to its cost.[42] LECs argue, that, in any

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[36] *See, e.g., Id.* at 3-11; MCI Petition at 3.

[37] AT&T Petition at 8 n. 13.

[38] *See, e.g.,* Bell Atlantic Comments at 2; BellSouth Comments at 7-8; GTE Comments at 9-15.

[39] 39 *See, e.g.,* US West Comments at 15.

[40] *See* US WEST Comments at 15; BellSouth Comments at 7 (IXCs must incur greater cost *not* to deliver CPN).

[41] *See, e.g.,* Bell Atlantic Comments at 3; *see also* Pacific Comments at 12.

[42] See Bell Atlantic Comments at 3; *see also* GTE Comments at 9.

event, any IXC charges to terminating LECs would be offset by the originating LEC charges to IXCs, thus eliminating any economic rationale for these charges.[43]

29. LECs further argue that IXCs offer their customers services that use, deliver, or operate on ANI – another form of calling number identification – and that nothing in the Commission's decision precludes them from developing additional end user services based on the CPN parameter of the SS7 protocol.[44] BellSouth claims, in fact, that ANI delivery services offered to end users by IXCs may compete directly with interstate end user calling number delivery services offered by the LECs. Thus, BellSouth claims that IXCs therefore have an incentive to charge LECs for CPN to increase LEC costs.[45] SWBT argues that if IXCs believe they are not recovering enough for transmitting CPN, they should raise rates to their own customers.[46]

30. *Discussion.* For the reasons set forth below, we affirm our decision that carriers must pass CPN to connecting carriers on interstate calls without charge.

31. Throughout this proceeding, commenters have overwhelmingly supported the conclusion that ubiquitous availability of CPN is in the public interest.[47] As many parties recognize, interstate CPN is the foundation for many new

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[43] *See, e.g.*, SWBT Comments at 6; *but see* GTE Comments at 10.

[44] *See, e.g.*, BellSouth Comments at 5-6. ANI is discussed at paras. 17-18, *supra*.

[45] BellSouth Comments at 6; *see also* GTE Comments at 15. *But see* Sprint Reply at 4 n. 3.

[46] SWBT Comments at 7.

[47] *See, e.g.*, Ad Hoc Petition at 8.

telecommunications products and services that will benefit the American public in many ways.[48] We adopted a federal policy on this matter because we found that uncertainty about carrier responsibilities was impeding the development of interstate services.[49]

32. Widespread SS7 deployment supports nationwide availability of CPN. SS7 makes possible during call set up, transmission of CPN as part of the initial address message. The SS7 protocol anticipates passage of CPN where call set up capability exists.

33. The basis for our conclusion that CPN should be passed from carrier to carrier at no charge is that CPN is an intrinsic part of SS7 call set up and that the costs for transporting the CPN parameter for carriers equipped with call set up capability are *de minimis*. Several IXCs dispute this and urge us not to require them to pass CPN, but instead allow them to pass this information selectively to terminating LECs who either agree to pay for the CPN or enter into some other reciprocal business arrangements with these IXCs. We find their arguments are not persuasive.

34. First, IXCs cannot reasonably claim that free passage of CPN to connecting carriers denies them recovery of their SS7 deployment costs.[50] The Commission has clearly stated that SS7 deployment represents a general network upgrade, the core costs of which should be borne by all

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[48] *See* paras. 2-3, *supra*. Specific examples of such services being marketed by carriers today include Call Return, Priority Ringing, Selective Call Forwarding and Calling Name.

[49] Report and Order at para. 23.

[50] *See* AT&T Petition at 5-6.

network users.[51] There is no evidence that IXC SS7 costs are not being recovered from the general body of network users. IXCs and LECs will therefore continue to recover their SS7 deployment costs through these charges, as well as through CPN-based services that they offer to their end users.[52] IXCs also can recover their SS7 deployment costs through greater network efficiencies that could result, for example, in lower access charges.[53] Further, as SS7 is used to support emerging technologies such as advanced intelligent network and personal communications services, LECs and IXCs can both realize new revenues from new services and from greater utilization of their networks to cover the costs of SS7 deployment.[54]

35. IXCs further argue that our decision improperly denies them compensation for transmitting interstate CPN. Again, however, they have not demonstrated that they are incurring significant uncompensated costs to carry it. Only AT&T, in an *Ex Parte* presentation made after the official

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[51] *Provision of Access for 800 Service*, Memorandum Opinion and Order on Reconsideration and Second Supplemental Notice of Proposed Rulemaking, 6 FCC Rcd 5422, 5428 (1991). This conclusion was based on findings that SS7 not only supports a number of new interstate and intrastate services, but also increases the efficiency with which carriers provide existing services. Although the focus of that order was costs incurred by local exchange carriers in deploying SS7 networks, the analysis also applies to interexchange carrier investment.

[52] For example, IXCs currently offer their own caller identification services through the delivery of ANI or CPN on 800 numbers.

[53] When compared to multifrequency signaling, SS7 signaling provides network efficiencies in establishing and releasing a call connection by more quickly connecting and disconnecting interoffice circuits before and after a call. Pacific Comments at 12.

[54] *See, e.g.*, Pacific Comments at 12-13.

comment cycle ended, attempts to provide quantitative data to support its assertion that costs IXCs incur to deliver CPN are not *de minimis*.

36. AT&T does not question that it receives CPN without a separate charge from LECs. Rather it alleges that the costs it incurs annually for delivery of CPN are eleven percent of its total interstate SS7 costs amounting to $79.6 million. This figure, however, does not withstand close scrutiny. First, AT&T's claimed annual interstate CPN delivery expenses include network depreciation and operating expenses associated with its SS7 network. These costs are not caused by CPN transmission. AT&T, like all major interexchange carriers, has incurred these expenses to derive efficiencies and new services from out-of-band signaling unachievable from in-band multifrequency signaling.

37. Second, AT&T's cost estimate relies, in part, on projections made by Pacific in a Petition for Rulemaking to Amend Section 69.106 of the Commission's rules.[55] In the Petition, Pacific characterizes $.0162 as "the direct cost (plus overhead) to set up a call." Pacific does not state that this figure represents an SS7 cost. In any event, Pacific's number is theoretical; it is not currently reflected in access rates.

38. Thus, AT&T's cost analysis is based on rates that Pacific might theoretically charge for services rather than costs that AT&T actually incurs for call set up. We believe AT&T's $79.6 million cost figure is unreliable for other

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[55] *Pacific Petition for Rulemaking to Amend Section 69.106 of the Commission's Rules* at 6, filed June 30, 1994. Pacific Bell requests the rulemaking so that the switched access local switching rate will encompass a per message call set up charge in addition to the per minute usage charge.

reasons, as well. AT&T assumes that SS7 costs should be allocated among message parameters based upon the relative numbers of bytes required to fill the field associated with each. Assuming that this is a reasonable allocation rule, AT&T argues that CPN passage accounts for eleven percent of bytes. Even assuming the total number of message parameters were relevant, which AT&T has not demonstrated, AT&T's determination that CPN costs amount to eleven percent of interstate SS7 expenses ignores the fact that CPN represents but a very small part of the total number of message parameters that are likely to be used in IXC SS7 networks. For example, in deriving its percentage factor, AT&T considers only the most basic "ISUP" call set up parameters. It does not include other ISUP messages, network management messages and TCAP messages routinely used in SS7 signaling. While we have no information in the record that enables us to determine how often these messages occur in AT&T's network, we believe that including such messages in its analysis would significantly reduce AT&T's claimed "CPN as a Percent of SS7."

39. AT&T also has ignored the fact that IXCs typically request LECs to provide both CPN and charge number parameters when using SS7 to set up a call. Interface specifications reflected in LEC access tariffs, for example, state that when an IXC requests these parameters – where charge number and CPN are the same – the CPN parameter alone is "populated" in the IAM.[56] In such situations, this means that an IXC need

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[56] Common Channel Signaling (CCS) Network Interface Specification, Bellcore, TR-TSV-000905 (Issue 2, July 1993).

carry only three, instead of twelve additional bytes of signaling information. AT&T's calculations assume that CPN passage requires carriage of twelve bytes in the IAM. Although we cannot determine from the record how often CPN and charge number are the same, some parties suggest it occurs on thirty-five percent to ninety-five percent of all initial address messages.

40. In any event, there is little reason to believe IXCs would realize new revenue from bargaining with LECs over passage of CPN, even if we agreed, as Sprint suggests, that the cost standard applied to CPN should not be marginal cost.[57] Under Sprint's model, the initiating LEC would be allowed to charge IXCs for providing CPN. There is no reason to believe that IXCs could negotiate better rates when selling CPN to terminating LECs than when buying CPN from originating LECs.

41. Our policy does not deny IXCs the ability or incentive to develop new SS7-based services. To the extent IXCs believe LECs are better positioned to use CPN to develop end user services, our policy creates incentives for IXCs to develop competitive alternatives to LEC distribution service. Indeed, as noted above, IXCs already provide some of these services directly. Moreover, IXCs are free to develop services based on CPN by reselling CPN acquired from LECs.

42. Finally, no legal rights of IXCs are compromised by a federal rule that requires interexchange carriers to transmit signaling information received from originating carriers to terminating carriers. Because the IXCs are recovering the costs associated with their deployment of SS7 through rates

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[57] Sprint Petition at 11-12.

for long distance services, they have no right under the Constitution or the Communications Act to be compensated again by LECs on the terminating end of calls on which CPN is passed. The CPN rule does not effect an unlawful taking of carrier property. The courts have made clear that the government may regulate rates "chargeable from the employment of private property devoted to public uses" and that "[s]o long as the rates set are not confiscatory, the Fifth Amendment does not bar their imposition."[58]

43. Furthermore, in order to determine whether rates are confiscatory, courts look at the end result, not at the rate-setting methodology.[59] In this case, the overall rates for long distance services certainly cannot be construed as "confiscatory." In particular, it cannot be claimed that the imposition of an additional requirement, resulting in merely *de minimis* additional costs, renders a rate confiscatory. Thus, the requirement that IXCs pass CPN to terminating carriers does not amount to a taking under the fifth amendment. Under the Communications Act carriers are entitled to compensation; they are not entitled to unfettered discretion as to the source of that compensation. Moreover, they cannot claim they were without adequate notice that we would adopt this policy. The Notice of Proposed Rulemaking in this proceeding documented that carriers were having difficulty in resolving financial arrangements related to passage of CPN.[60] The Notice expressed Commission intent to "resolve the legal, financial and technical issues implicated by the delivery of an interstate

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[58] *FCC v. Florida Power Corp.*, 480 U.S. 245, 253 (1987).

[59] *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-13 (1989); *Federal Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 602 (1944).

[60] NPRM at para. 9.

caller ID service."[61] The Commission asked for comment on the extent to which carriers had made progress in reaching agreements to provide service jointly and any impediments to such agreements being negotiated.[62] Commenters responding to the NPRM fully briefed the Commission on their respective positions; on reconsideration IXCs have not provided new or different information on this record that the Commission has not already considered.

44. *Conclusion.* We find our policy does not prevent IXCs from recovering their SS7 development and deployment costs. Our action here is consistent with our policies governing LEC recovery of these costs, that is, that costs that result in a general network upgrade ought to be borne by all network users. It encourages more, not less, development of new CPN-based services by removing uncertainty over intercarrier compensation that appears to have impeded their development previously. Our policies prohibiting restriction on resale of interstate service offerings mandate that terminating LECs not impede the resale of interstate CPN-based services.[63] Resale of interstate CPN should facilitate competition among carriers and the development of additional new services.

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[61] *Id.*

[62] *Id.*

[63] *See Resale and Shared Use of Common Carriers Services and Facilities*, 60 FCC 2d 261 (1976), *modified on other grounds* (*Resale and Shared Use Reconsideration Order*), 62 FCC 2d 588 (1977), *aff'd sub nom. AT&T v. FCC*, 572 F.2d 17 (2nd Cir. 1978), *cert. denied*, 439 U.S. 875 (1978). *See also Resale and Shared Use of Common Carrier Domestic Public Switched Network Services*, 83 FCC 2d 167 (1980).

ii. Equipment Upgrades to Support CPN Delivery

45. *Background.* The *Report and Order* amended Section 64.1601(a) to require common carriers using SS7 and offering "any service based on SS7 functionality to transmit the calling party number associated with an interstate call to interconnecting carriers."[64] The Commission stated that carriers were not required to invest in SS7 technology in order to facilitate delivery of CPN, and were only required to deliver it where doing so was technically feasible.[65]

46. *Positions of the Parties.* Several petitioners request that the Commission clarify that SS7 can be used by carriers without the carrier being required to transmit CPN or provide blocking capabilities.[66] Otherwise, they say, they would be forced to upgrade offices that have been equipped with SS7 for purposes other than CPN-based service deployment, such as 800 data base service.[67]

47. Commenters addressing this issue argue that the existence of SS7 does not automatically guarantee the ability to transmit CPN and its associated privacy indicator.[68] GTE, for example, says that in some of its central offices, 800 calls are routed to tandem switches where SS7 signaling is used

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[64] Report and Order at para. 17 and Appendix C.

[65] *Id.* at para. 17.

[66] *See, e.g.,* Allnet Petition at 3-5; Cable and Wireless Petition at 3-4; NTCA Petition at 2-4; Sprint Petition at 13-14.

[67] Sprint Petition at 13. In these instances, carriers use the TCAP capabilities of the SS7 protocol, which is different from the ISUP part of the protocol used for call set up and CPN passage. Carriers cannot use TCAP to transmit CPN. *See* discussion *supra* at para. 20.

[68] *See, e.g.,* NTCA Comments at 2-3; GTE Comments at 20.

only to determine proper routing of the call. In these situations, it says, multifrequency signaling is used between the end office and the tandem switch, and other calls from those end offices do not use SS7 technology at all.[69]

48. GTE maintains that the decision to deploy SS7 capability and the decision to install caller ID and call blocking software are separate and distinct investment decisions.[70] GTE asserts that if the Order were to require full SS7 deployment at any location where SS7 were used for any purpose, no matter how incidental, all common carriers would be forced to reevaluate investment plans and possibly slow the deployment of CPN-based services due to increased costs.[71] US WEST assumes that interstate passage of CPN and any attendant blocking is predicated on technical feasibility.[72]

49. *Discussion.* We do not require carriers that do not have SS7 call set up capability to make the SS7 investments that would enable them to pass CPN. We attempted to make this clear by (1) stressing that carriers "are not required to invest in SS7 technology in order to facilitate delivery of the calling party number;" and (2) narrowly defining "Calling Party Number" to mean the subscriber line number or the directory number contained in the calling party number

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[69] GTE Comments at 18. Similarly, in twenty-one of its LEC offices, Sprint says that SS7 is used only for 800 data base service, and that current software cannot pass CPN. *See also* Sprint Petition at 13.

[70] GTE Comments at 20.

[71] *Id.* at 21; *see also* CompTel Reply at 1.

[72] US WEST Comments at 20, *citing* para. 17 of the Report and Order ("Carriers are only required to transmit the CPN and privacy indicator where technically feasible").

parameter of the call set up message associated with an interstate call on an SS7 network.[73]

50. The mere presence of SS7 features in a network does not bring with it CPN transmission functionality. Such functionality requires specific SS7 call set up capability. Moreover, because SS7 call set up capability already exists in nearly all major carrier networks, nationwide deployment of CPN services is possible. We see no reason to compel further deployment at this time.

51. Our decision means that consumers served by carriers not having SS7 call set up capability will be unable to use the new and valuable services that interstate passage of CPN makes possible until their carriers deploy this capability. We assume that many of these customers currently are not able to choose an alternate local exchange service provider. Nevertheless, we believe that the benefits of being able to pass and receive CPN and provide advanced wireline and wireless services will motivate additional service providers to make this investment. We expect that carriers without SS7 call set up capability will feel increasing competitive pressure to deploy it. We encourage the deployment of SS7 functionality sufficient to pass CPN wherever possible in order to provide consumers the widest possible range of CPN-based services.

B. Privacy: Blocking Mechanisms

52. We describe below how privacy interests have been addressed in federal and state regulatory regimes. We analyze

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[73] Report and Order at para. 17; 47 C.F.R. 64.1600.

the technological difficulties of reconciling state rules that allow calling parties to protect their privacy through per line blocking with federal requirements that a party placing an interstate call may protect his privacy by concealing CPN on only a per call basis. We reexamine the *67 privacy model established in our rules in light of new record evidence, find that it is not feasible to have separate federal and state blocking regimes on the same line, and adopt a model that requires *67 per call blocking and *82 per call unblocking where state policies permitting per line blocking are in effect. Finally, we describe our limited preemption of existing state regimes.

53. *Background.* In the *Report and Order*, the Commission determined that callers placing interstate calls should be able to prevent delivery of their number to called parties by dialing *67 on a push button telephone or by dialing 1167 on a rotary telephone.[74] In reaching this conclusion, the Commission balanced the calling party's privacy interests against the efficiencies and benefits attendant to free passage of CPN as well as the called party's privacy interests.[75] The Commission found that per line blocking was not the best choice for a federal model because it was not the most simple and uniform approach and because it unduly burdened CPN-based services and called parties by failing to limit blocking to only those calls for which the caller wished to conceal his CPN. The Commission rejected arguments that certain identified groups, such as domestic violence or law enforcement agencies,

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[74] Report and Order at paras. 68-69.

[75] The right of privacy is defined as "[t]he right to be let alone; the right of a person to be free from unwarranted publicity." Black's Law Dictionary 1195 (6th ed. 1990).

should be allowed to subscribe to per-line blocking,[76] determining that designation of a "general rule" – as part of the federal model for caller ID services – to resolve problems for "special cases" would not be optimal.[77] It stated that individuals wishing to block transmission of CPN on all originating calls could do so by purchasing terminal equipment for as little as $40.00 that automatically outpulsed *67 on each call.

54. The Commission noted that state regulatory regimes for protecting the privacy of calling parties ranged from no protection for callers to free per line or per call blocking. It did not preempt any of these intrastate regimes. It did, however, preempt states from: prohibiting per call blocking for interstate calls; requiring a different blocking alternative for interstate calls or prohibiting the offering of CPN-based interstate services.

55. *Positions of the Parties.* Many parties petition for reconsideration of the Commission's preemption decisions. In particular, some states urge the Commission to endorse state regulatory regimes for blocking that differ from the federal model. They argue that a federal model that only permits a customer to block passage of CPN on a per call basis is technically incompatible with state models that permit carriers to block all calls originating from a particular line.[78] NARUC argues that endorsing state policies minimizes caller confusion because callers most likely are aware of existing state requirements.[79] California urges that the Commission

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[76] Report and Order at para. 39.

[77] *Id.* at para. 40.

[78] *See, e.g.*, California Petition at 3-4; Florida Petition at 8.

[79] NARUC Petition at 12.

defer to state policies, except where the state does not provide for a generally available blocking option. In the latter case, it recommends that the Commission adopt a minimum federal privacy standard.[80] California notes its regulatory policies provide for consumers to elect per call blocking, per line blocking and "where feasible," per line enabling using *82.[81] Pacific states caller ID service is not currently offered in California because under California policy, subscribers who have an unlisted line (forty-four percent of Pacific's subscribers), and who do not elect per call blocking are automatically provided per line blocking. It urges the Commission to preempt California's per line default blocking policy for unpublished and unlisted numbers.

56. In the event the Commission refuses to defer to state policies, California offers a technical proposal to accommodate differing federal and state blocking regimes on the same line that it alleges requires minimal software changes for carriers.[82] Switch vendors, it claims, could incorporate minor modifications into their current development cycles, minimizing costs and causing only slight delay in meeting the Commission's timetable for interstate CPN passage.

57. A number of exchange carriers also urge the Commission to defer to the blocking regime of the state in which the call originates and require the carrier in the terminating

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[80] California Reply at 3.

[81] *Id.* at 6.

[82] California Petition at 7-10 and Appendix A. As we describe in more detail, *infra*, the proposal would rely on "unused" information bits in the SS7 IAM. The originating switch would add appropriate additional privacy information and the terminating switch would add software necessary to distinguish interstate from intrastate calls.

state to honor a privacy indicator that accompanies the interstate call.[83] Still others advocate either: (1) deference to state blocking policy; or (2) federal preemption of existing intrastate rules developed to accommodate intrastate caller ID service.[84] Some petitioners allege per line blocking is needed to minimize risks to health and safety.[85]

58. Most parties agree that a system in which one jurisdiction permits only per line blocking while the other permits only per call blocking would be unworkable.[86] Such blocking plans, Bell Atlantic says, would confuse consumers.[87] Parties further argue that such dual blocking methods raise difficult technical problems for which the California technical proposal offers no practical solution. Many parties maintain that technology to accommodate such different interstate and intrastate blocking rules simply does not exist today.[88] Sprint contends that LECs urging the Commission to defer to state preferences for per line blocking do so out of a concern for the burden on the local exchange industry that would result if subjected to a dual blocking standard.[89]

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[83] *See, e.g.*, NYNEX Petition at 3-4; Ameritech Petition at 3.

[84] *See, e.g.*, GTE Comments at 3; US West Comments at 12-13.

[85] *See, e.g.*, Domestic Violence Coalition on Public Policy Petition at 2; SAGE and SOAR Petition at 2, 5-11.

[86] *See, e.g.*, Sprint Comments at 7-8; Bell Atlantic Comments at 4.

[87] Bell Atlantic Comments at 4 (to determine whether their number will be disclosed to the person they are calling consumers should not have to ask themselves: "Where am I? Is this call interstate or intrastate? Is there per line blocking already on this line?"); *see also* SWBT Comments at 8.

[88] *See, e.g.*, US WEST Petition at 5.

[89] Sprint Comments at 7.

59. BellSouth argues that California's technical proposal to accommodate such dual blocking would require substantial changes to existing SS7 industry standards.[90] It says new standards would need to be developed, upon which the industry would need to agree, and that this would take a significant amount of time – even assuming an expedited process. According to BellSouth, SS7 switch requirements would have to be developed and software created to instruct switches not only how to handle new values, but also how to handle communication with switches that are not upgraded. BellSouth claims that California's proposal also is incompatible with approved national and international standards for ISDN.[91]

60. Some parties express concern that a dual blocking regime that permits per line blocking will undermine the value of CPN-based services to the public by increasing the number of calls for which calling party number is not passed.[92] By contrast, the advantages of the blocking scheme adopted in the *Report and Order*, they say, are numerous. This blocking scheme, they say, provides nationwide uniformity, decreases confusion, frees telephone company resources to develop new CPN-based products and services, and avoids costly changes to the network.[93] A number of parties that support a uniform blocking regime for interstate and intrastate calls say that a limited exception to a prohibition on per line blocking, to accommodate groups with heightened safety

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[90] See BellSouth Comments at 10; *see also* GTE Comments at 4.

[91] BellSouth Comments at 12.

[92] *See, e.g.*, Pacific Comments at 2-3.

[93] *See, e.g., Id.*; AT&T Comments at 2-5; MCI Comments at 9.

needs, would not unduly undermine the benefits of caller ID growth.[94]

Discussion

i. Federal Policy Objectives

61. A primary mission of the Commission is to regulate interstate and foreign communication by wire and radio so as to make available to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service.[95] In both this and other proceedings, we have identified the introduction of new technologies, the modernization of the nation's telecommunications infrastructure, and the offering of new services to the public as objectives essential to realizing this statutory goal.[96] The creation of a federal model governing passage of CPN is part of this effort.

62. The federal model we adopted was designed to employ a simple and uniform approach for the provision of CPN-based services. It created a baseline of expectations and performances associated with these services that sought to

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[94] *See, e.g.*, AT&T Comments at 2.

[95] 47 U.S.C. § 151.

[96] *See, e.g.*, Report and Order at paras. 11, 12; *see also Telephone Company-Cable Television Cross-Ownership Rules, Sections 63.54-63.58*, Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking, 7 FCC Rcd 5781, *aff'd in part and modified in part*, Memorandum and Order on Reconsideration, 10 FCC Rcd 244 (1994); *see also* 47 U.S.C. § 157.

balance calling and called party privacy needs and expectations. The model facilitated the offering of CPN-based services by removing barriers to the introduction and financial success of such services.[97] Among such barriers was uncertainty over the blocking policies that would govern an interstate call. The Supreme Court has made clear that where necessary to preserve Commission goals against conflicting state rules that thwart valid federal communications policies, the FCC may preempt state regulation if it is "not possible to separate the interstate and intrastate components of the asserted FCC regulation."[98] As we discuss below, we now conclude that CPN-based services are "jurisdictionally mixed" services, and that it is impractical and uneconomic to require the development and implementation of a dual blocking capability on the same line that would permit both the federal per call blocking system as adopted in the *Report and Order* and state per line blocking systems. In light of this, we have reexamined the *67 privacy model established in the *Report and Order* and now modify it in a way that will accommodate existing state per line blocking regimes while still permitting us to realize our federal policy goals of promoting the development of CPN-based services, consumer choice and privacy.

ii. Technological Relationship Between Interstate and Intrastate Caller ID

63. The record shows that both intrastate and interstate CPN-based services depend on use of the SS7 call set up

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[97] Report and Order at para. 11.

[98] *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 375 n. 4 (1986).

protocol to pass CPN to the called party.[99] Using this protocol, a privacy indicator accompanies the CPN, and based on that indicator, a terminating switch determines whether to deliver the CPN to the called party whose line is equipped to receive it.

64. For the purpose of conveying a calling party's privacy request, the privacy indicator may only have a "value" of "on" or "off." This is populated either by a carrier assigning the caller's line a value indicating "private" (per line blocking); or, in the absence of this line assignment, by the caller pressing *67 before any particular call to request privacy on that call (per call blocking). Once a determination is made on how the caller's line is categorized – either "private" to connote per line blocking or "public" to connote per call blocking – the switch cannot change this determination as a function of the jurisdictional nature of the call. The technology, in other words, does not allow one blocking method, per line, to be used on intrastate calls and another blocking method, per call, to be used on interstate calls. We thus conclude that caller ID service with its attendant privacy indicators is a "jurisdictionally mixed" service.

iii. Dual Blocking Proposals

65. Some parties suggest that different state and federal caller ID privacy requirements can be accommodated by dual blocking mechanisms. We disagree. We believe the overwhelming majority of commenters in this proceeding have

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[99] *See, e.g.*, US WEST Petition at 5.

demonstrated that requiring only per call blocking for interstate calls while permitting per line blocking or no blocking on the same line for intrastate calls is not a practical option at this time. Switch vendors such as Northern Telecom, AT&T and Ericsson confirm that technological problems associated with implementing such a dual blocking regime make such dual blocking impractical.[100]

California's Proposal

66. California offered the only concrete technical proposal to accommodate two different blocking mechanisms on the same line. California argues that carriers can accommodate this dual blocking merely by making small software changes in originating and terminating switches as part of regular software upgrades.

67. Like the majority of commenters, we do not believe California's proposal can realistically be achieved by modest software changes as part of routine switch upgrades. First, California's proposal requires modifying existing subfields in the initial address message. These changes can only be made with the consent of industry standards bodies.[101] Although

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[100] *See* US WEST Petition, Attachments A, B, and C (containing information from various vendors on the costs and time required to introduce dual blocking); *see also* Sprint Ex Parte Letter of February 9, 1995 (stating that dual blocking rules will not work).

[101] Telecommunications standards bodies develop recommendations that guide telecommunications service providers and manufacturers of equipment to provide interoperable telecommunications systems and equipment that support national and worldwide telecommunications services. For example, the American National Standards Institute (ANSI) through its Committee T1 develops technical standards and reports

estimates vary, the time needed to accomplish such change is not insignificant and some parties suggest it could take years.[102] California's suggestion that changes can be effected within regular intervals planned for upgrading switch software fails to recognize the developmental work that must occur prior to a generic software release, the subsequent testing of software, or the changes that may result from that testing.[103]

68. Moreover, even if U.S. Standards could be changed to accommodate California's proposal, those standards would then be different from those of other countries unless international standards could be changed as well.[104]

69. Assuming standards could be modified on an expedited schedule, and that no material disadvantage would attach to U.S. industry for having standards different from the rest of the world, new software would need to be developed to enable switches to transmit and accept the new codings.[105] While it appears that the new software could be created to accommodate dual blocking for caller ID services, there

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supporting the interconnection and interoperability of telecommunications networks.

[102] GTE Comments at 5-7.

[103] *See, e.g., Id.* at 6-7.

[104] *See* BellSouth Comments at 12. California's initial proposal for modifying the SS7 presentation subfield for the presentation status of CPN, we note, is not only incompatible with national standards, but also is incompatible with current international standards for ISDN Calling Line Identification.

[105] *See, e.g.*, GTE Comments at 6; Pacific Bell Comments at 8-9 and Exhibit B.

remains, even so, the problem of switch processing of services reliant on earlier SS7 standards. For example, technical requirements and software would need to be modified for CLASS[106] and ISDN features based on such standards. Nor is it clear what impact the California proposal would have on services currently being developed, also based on existing standards. Interworking problems created by the modification of the SS7 standards would also need to be monitored carefully.[107]

70. Finally, at the terminating switch, the record indicates that new tables would need to be built that would contain the area codes of the state that the switch serves.[108] The terminating switch would also need to be modified so that it could analyze the new CPN privacy indicators and respond to the caller's privacy request. It is not clear whether these new procedures in the terminating switch would affect call processing or call set up time but switch manufacturers suggest that they might.[109] Moreover, we expect that customers will be confused by the operation of California's dual blocking proposal. They will need to remember that if an interstate call made from a telephone having per line blocking for

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[106] Custom Local Area Signaling Services (CLASS) represents a set of call management services on outgoing and incoming calls. Examples of CLASS services are caller ID, auto call return and selective call forwarding.

[107] For example, in the software development process requirements would need to address how an upgraded switch with the new coding capability interworks with a non-upgraded switch to honor the privacy request of the calling party correctly.

[108] These codes are sometimes referred to as NPA codes.

[109] *See, e.g.*, US WEST Petition Attachment A (Input provided by Northern Telecom).

intrastate calls is made, they need to dial *67 if they wish to block their CPN. If customers fail to dial the *67, they will receive no indication that their number will be displayed.

71. California does not dispute the carriers' argument that its solution would require modification of SS7 standards. Instead, it argues that the "outcome . . . of standards debates is largely determined by LECs" and that LECs could therefore dominate the standards arena to force an expedited acceptance of the changes it proposes.[110] Standards processes, however, depend also on the consensus and participation of switching and terminal equipment manufacturers, interexchange carriers, consultants, and others. Even if we assume LEC influence would be overwhelming in the national standards process, we cannot assume the same influence in the international standards process. The latter process draws world telecommunications interests at least as influential as the LECs and with often markedly different priorities.

72. We believe a requirement to modify current national and international standards, to develop new switch software for caller ID and many other CPN-based services, and to deploy these non-trivial software changes, as well as the time and expense associated with these activities, makes California's proposal infeasible. Moreover, it is not at all clear that California's proposal will have only a "small" impact on switch operation. California provides no development cost estimates in its proposal and there is no other evidence in the record to suggest that it will not be at least as high as the cost estimates for other dual blocking systems. Those estimates range between $70 and $500 million for a major LEC.

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[110] *See* California Reply Exhibit B at 3.

Switch Manufacturers' Dual Blocking Proposals

73. California provided the only specific dual blocking proposal to permit per line blocking for intrastate calls to coexist with a federal policy permitting only per call blocking of CPN for interstate calls. Other commenters, however, discussed what would be necessary to establish a dual blocking system. For example, switch manufacturers AT&T, NTI and Ericsson, also present cost and time estimates regarding changes needed to accommodate dual blocking regimes. The record shows that these estimates are not based on any industry standard or technical requirements.[111] Without these requirements, the accuracy of their cost projections and time frames for developing the dual blocking capability cannot be judged. According to Northern Telecom, developing such technical requirements could take as long as three years.[112]

74. Moreover, the dual blocking proposals presently conceived by these switch vendors fail to address a number of issues that could materially affect the availability of nationwide calling party number based services. For example, it is not clear to us how their blocking proposals, which require the originating end office to distinguish between interstate and intrastate calls, will enable the originating switch to determine the jurisdictional status of such non-geographically assigned Numbering Plan Areas (NPAs) as 500, 700, 800 and

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[111] *See, e.g.*, US WEST Petition Attachments A, B and C. Technical requirements would be based upon industry standards for dual blocking, which do not exist at this time.

[112] *See* SWBT and Northern Telecom *Ex Parte* Letter of February 8, 1995.

900.[113] Such codes do not provide information to the originating switch about the geographical location of the called party. This information can only be determined later in the call. Thus the manufacturers' proposals would leave unserved a sizable and growing field of numbers.

75. Even if such design problems could be resolved quickly, the record further indicates that additional time required for call processing using this technology would slow completion of almost every call.[114]

76. Nor does the cost associated with developing dual blocking systems appear to be insignificant. While the manufacturers' cost estimates vary because of uncertainty in using yet undeveloped technical requirements, the costs of upgrading LEC networks to accommodate the dual regime could be as high as $70-$500 million for a major LEC.[115]

77. We conclude on the basis of the record before us that it is not feasible as a technological and economic matter to develop a dual blocking system for CPN-based services within a time frame consistent with our objectives. While we are not prepared to say that dual blocking will always be infeasible, we need not demonstrate absolute future impossibility to justify federal preemption here. We need only show that interstate and intrastate aspects of a regulated service or

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[113] By contrast, in California's dual blocking proposal, the terminating end office makes the determination between intrastate and interstate calls.

[114] *See, e.g.*, GTE Comments at 7; AT&T Comments at 5, citing a BellSouth letter that dual blocking will increase call processing time.

[115] *See, e.g.*, US WEST Petition at 7 n. 10 and Attachment A; AT&T Petition at 11.

facility are inseverable as a practical matter in light of prevailing technological and economic conditions.[116] As explained in detail above, the record demonstrates this. Furthermore, California's suggestion that a regulatory proceeding of this kind is not the appropriate forum to decide at the "bit level" how to implement dual blocking regimes cannot release us from our obligation to consider seriously anticipated difficulties associated with record proposals for dual blocking. These difficulties include risks of significant delay, costs, and other negative effects on existing services. We may preempt inconsistent state regulation that would "negate" the exercise of our authority where, as here, the interstate aspects of the matter cannot be severed from the regulation of the intrastate aspects.[117] As we now explain, however, we are modifying our policy governing passage of CPN in a way that should result in a much narrower preemption of state policies than our decision in the *Report and Order* would have required. We believe our revised policy should nonetheless ultimately permit realization of our goals for interstate CPN-based services.

iv. Federal Preemption

78. Many commenters urge that we reconsider our policy not to permit per line blocking options. They have persuaded us that it is possible to accommodate per line blocking

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[116] *See, e.g., People of California v. FCC*, 39 F.3d 919 (9th Cir. 1994).

[117] *Public Service Comm'n of Maryland v. FCC*, 909 F.2d 1510, 1515 (D.C. Cir. 1990).

permitted or required by a state without thwarting or unreasonably impeding federal goals, if consumers always are able to unblock their line by dialing *82.

79. Our primary objective in this proceeding is to remove the uncertainty that is inhibiting the development of valuable interstate services. Because the states differ significantly on the extent to which and the method by which they require the CPN of a calling party to be concealed, it is impossible to accommodate all existing state approaches within a single federal model. In selecting the *67 per call blocking model, we chose a simple, uniform and inexpensive policy that attempted to balance the privacy interests of the calling and called parties. Unlike some states' policies, it gave all callers an opportunity to conceal their CPN, at no charge to the calling party. But unlike other states' policies, it did not accommodate per line blocking. We found per line blocking was not the best choice as a federal policy model because it was not the most simple and inexpensive choice and because it would restrict the development of CPN-based services by not limiting CPN concealment to only those circumstances where privacy is important to the calling party.

80. At the time we articulated that model, we believed that it might be possible to develop a dual system that could accommodate differing state and federal blocking systems on the same line. However, given the evidence presented in this record, we now believe that the creation of a system in which one jurisdiction permits per line blocking while the other permits only per call blocking is not feasible as a technological and economic matter. Accordingly, we have reexamined the *67 model to attempt to reconcile federal interests with those expressed by the states, paying special attention to the fact that many consumers across the country have become

accustomed to a wide range of blocking options. In this regard, we have taken special note of one regime proposed by California – uniform *67 for consumers who choose per call blocking and uniform *82 unblocking for those that choose per line blocking. This approach is only slightly more complicated than the *67 blocking model and preserves a consumer's ability to choose when to reveal and when to conceal CPN under either blocking arrangement. Where a line is blocked, this approach ensures the free transmission of CPN on a per call basis, at the election of the calling party. The decision to use *67 and *82, in short, maximizes consumer choice, is the federal policy least disruptive to state policies and goes the farthest to eliminate customer confusion.

81. Accordingly, we now modify our policy to adopt a model that requires a carrier to offer *67 per call blocking for every interstate call. We also require that carriers enable customers to unblock passage of CPN on lines with per line blocking by dialing *82. This approach should obviate significant reeducation efforts in the twenty-four states where per line blocking is generally available to consumers. Although interstate callers still may not know whether the line they are calling from is blocked, they are assured of CPN passage by first dialing *82, regardless of the status of the line. In some states, dialing *67 now unblocks the line. Under our revised federal model, this approach is preempted. Universal and exclusive use of *82 to unblock avoids the risks of inadvertently defeating a block by dialing *67.

82. The *82 feature also addresses our concern that consumers not be deprived of the ability to reveal CPN when they wish to do so. This maximizes the likelihood that the interstate CPN-based services we expect will develop will succeed or fail based on the calling party's choice whether to

reveal CPN. Although permitting universal per line blocking is likely to be more frustrating to parties subscribing to identification services – most commenters agree that the general availability of per line blocking makes these services less valuable – ultimately the success of the services will depend on callers choosing to reveal their number. Per line blocking simply offers calling parties an additional way to conceal the calling number.

83. Our federal policy is thus modified to accommodate state per line blocking policies as long as carriers offering per line blocking also include * 82 as an unblocking code. We believe this approach is technically feasible because the regime is in place in a number of jurisdictions.[118] In addition, commenters have not challenged California's representations that the approach is technically and economically reasonable. We will allow an initial period – until December 1, 1995 – for carriers to comply with the policy. Carriers able to demonstrate a compelling need for more time may file for waiver. Such waiver requests should set forth: (1) the facts that demonstrate why the carrier is unable to meet our compliance schedule; (2) the time within which they will come into compliance; and (3) a proposed schedule with milestones for meeting the compliance date.

84. Although we have modified our federal interstate policies to accommodate as many facets of states' caller ID policies as we can and still maintain our federal goals, there is one facet of California's intrastate policy – its per line blocking

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[118] Southwestern Bell and Bell Atlantic, for example, support it in several states. Southwestern Bell states that implementation of the approach in states that require some form of per line blocking is minimal.

default policy – that we believe will impede the accomplishment of those goals. California has directed carriers within its jurisdiction to assume that unless a customer with an unlisted or nonpublished phone number[119] affirmatively elects *not* to block passage of CPN for calls placed from that number, the customer has chosen to have his line blocked. Pacific states, and California has not refuted, that California's caller ID policy makes the offering of caller ID in that state infeasible.[120]

85. As an initial matter, it is not feasible to have different default policies for interstate and intrastate calls for the same reasons that it is not feasible to have different blocking policies for interstate and intrastate calls. Specifically, limiting the default provision to intrastate application is as much a practical and economic impossibility as providing separate privacy mechanisms for each jurisdiction.[121] As such, a per

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[119] Unlisted numbers, as used by California, are those telephone numbers available only through directory assistance but that do not appear in the white section of the telephone directory or street address directory. Public Utility Commission of California, Decision 92-06-065, June 17, 1992. n. 23, citing Pacific Bell Schedule Cal.P.U.C. No. A5.7.1.B.1. Nonpublished telephone numbers are not listed in any telephone directory, street address directory, or in the directory assistance records available to the general public. *Id.* n. 24, citing Pacific Bell Schedule Cal.P.U.C. No. A2.1.34.A.

[120] *See, e.g.*, Pacific Comments at 5-7. *See also* GTE *Ex Parte* presentation, January 25, 1995, at 4 (caller ID service is not offered by GTE in California).

[121] *See Public Utility Commission of Texas v. FCC*, 886 F.2d 1325, 1332-1334 (D.C. Cir. 1989); *North Carolina Utilities Commission v. FCC*, 552 F.2d 1036, 1043 (4th Cir.), *cert. denied*, 434 U.S. 874 (1977); *North Carolina Utilities Commission v. FCC*, 537 F.2d 787, 791 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976) (severability may be a practicable and economic impossibility).

line default policy would govern calls from both jurisdictions. Thus, passage of CPN on interstate calls from California would automatically be blocked if the caller has an unlisted or nonpublished line, thwarting the federal privacy policy favoring transmission of CPN in the absence of an affirmative decision by the calling party to invoke privacy. As a general matter, our determination that intrastate and interstate privacy mechanisms are inseverable, or jurisdictionally mixed, has led us to modify our overall policy in order to accommodate states with per line blocking systems. We do not preempt state policies concerning per line blocking, but rather modify our federal model to permit those regulatory regimes. We do, however, in this one instance and in as narrowly tailored fashion as possible, preempt this limited aspect of California's per line blocking policy because it impedes achieving our federal goals.[122] Importantly, California's customers may still choose to have per line blocking by simply exercising their choice to do so. We are merely saying that to accomplish per line blocking by default rather than by customer choice conflicts with our federal goals.

86. California's default policy thwarts and impedes our federal goals for interstate CPN-based services. Initially, to the extent California's default policy prevents the deployment of calling party number identification services in California, it deprives the residents of, and callers to, that state of access to the benefits we have determined in this proceeding are

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[122] *Louisiana Public Service Commission v. FCC*, 476 U.S. 355 (1986); *See also People of State of Cal. v. FCC*, 905 F.2d 1217, 1243 (9th Cir. 1990); *Public Service Commission of Maryland v. FCC*, 909 F.2d 1510, 1516 (D.C. Cir. 1990); (Order must be narrowly tailored to preempt *only* such state regulations as would negate valid FCC regulatory goals).

associated with such interstate services.[123] It does this in a number of ways. First, unless carriers in California enable the lines of residents in that state to receive interstate CPN, these residents will be unable to realize the efficiencies and new service opportunities we believe will flow from interstate CPN-based services. Second, callers to California from other states also would be denied the benefits of these new services and opportunities when they made calls to businesses or residents in California. For example, callers to businesses would be subject to longer order processing times, longer credit verification processes, and more cumbersome call routing techniques. Similarly, absent number identification services, callers to residents are likely to have fewer completed calls than if they are calling residents who are able to recognize the calling party's number, and want to receive their call. The negative impact on interstate CPN policies is exacerbated because residents in California receive and transmit more interstate calling minutes than the residents of any other state.[124] Depriving parties participating in those calls from the benefits we anticipate of the deployment of interstate CPN-based services necessarily thwarts and impedes the accomplishment of our objectives, particularly the development of interstate CPN-based services.

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[123] As is noted in paragraphs 55 and 84 above, Pacific believes California's regulation of caller ID service, and in particular its default per line blocking requirement make the offering of the service in that state infeasible. Thus, the policy precludes intrastate as well as interstate service.

[124] In 1993, California accounted for more than thirty-six billion interstate calling minutes. New York, the next highest state, accounted for less than twenty-nine billion interstate calling minutes in 1993. Statistics of Communications Common Carriers (FCC, 1994) at p. 22.

87. California's policy also deprives both parties on an interstate call from California of choice, an important element in our balancing of the rights and expectations of the calling and called parties. First of all, we have determined that as a matter of federal policy, the called party should have access to incoming CPN unless the calling party has exercised his right not to have his CPN revealed. While we have carefully balanced the privacy interests of the calling party with the expectation of the called party to receive CPN, California's default policy upsets this balance on an interstate call. It elevates the interest of the calling party and thereby negates our federal privacy policy concerning the rights of a called party on an interstate call. California provides no evidence that a caller who chooses to have an unlisted or nonpublished number also wants per line blocking. It is not apparent that a customer with an unlisted number, readily available through directory assistance, would object to the passage of that same number to a called party of his choosing when he makes a telephone call. Indeed, while it appears that more than forty states offer some level of per line blocking, no other state automatically assumes callers with unlisted or nonpublished numbers want per line blocking.[125] The record indicates that the general availability of per line blocking adversely affects the penetration of CPN-based services.[126] Because we seek to

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[125] Pacific Bell Reply at 7. *See also*, NASUCA Petition at 13, *citing* NYPSC: "Per line blocking . . . generally reduces the number of calls to which [CPN] will be provided." 132 PUR 4th 525, 534-35 (NYPSC 1992).

[126] *See, e.g.*, BellSouth *Ex Parte* presentation, February 10, 1995 (within BellSouth territory, the availability of free, per line blocking depresses the market for CPN-based services: in North Carolina, with free per line blocking, Caller ID service is taken by one half of one percent of all line subscribers; in Tennessee, with no blocking, 8.5 percent of all eligible line subscribers take the service).

make interstate CPN-based services widely available, we are reluctant to conclude, absent any supportive evidence, that California's assumption is correct.

88. California also asserts that the preemption of its default blocking requirement will potentially subject carriers to civil tort liability for violation of the state constitutional right of privacy.[127] We do not here assess whether California is legally correct on this point. This argument, however, does not affect our decision to preempt the default blocking requirement. The carriers themselves have asked us to preempt, suggesting that they are prepared to accept any risk of liability. Moreover, the carriers have the responsibility, as well as the ability and the incentive, to protect themselves against tort liability.

89. The California PUC asserts that "state telecommunications privacy regulation is not subject to federal preemption."[128] The California PUC also asserts that preemption of default line blocking for customers with nonpublished and unlisted numbers would violate state and federal free speech rights by "effectively compel[ling] and requir[ing] them to disclose their unlisted telephone numbers on every call they make as a condition of using the telephone."[129] California alleges a violation of a First Amendment right not to speak, as well as a First Amendment right to speak anonymously, citing cases under both the United States and California

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[127] California *Ex Parte* Letter, April 25, 1995, at 4.

[128] *Id.* at 4. California offers no support for this proposition.

[129] California *Ex Parte* Letter, April 27, 1995, at 2.

constitutions.[130] We do not agree with these arguments. Taken to their logical extreme, California's arguments would require default line blocking throughout the country if, in fact, the First Amendment would be violated in the absence of such blocking. We cannot accept such a conclusion.

90. First, we note that the federal cases on anonymity cited by California appear inapposite. For instance, California cites *McIntyre v. Ohio Elections Commission*, ___ US ___, 63 USLW 4279 (Apr. 19, 1995), as evidencing a right to speak anonymously that would be contravened by preemption of the line blocking default. That case did not create a generalized right to anonymity, however. Rather, the Court applied "exacting scrutiny" in reviewing a statute directed to core political speech (the distribution of handbills addressing the merits of a school tax referendum), stating that "no form of speech is entitled to greater constitutional protection."[131] The *Talley* case cited by California similarly involved anonymous leafletting as a means of political advocacy.[132] The disclosure of one's telephone number in the caller ID context is not analogous to such "core political speech," and thus should not be subject to the same level of exacting scrutiny.

91. Another important distinction is that both *McIntyre* and *Talley* involved total bans on anonymous speech. As to both the "right not to speak" and the "right to speak anonymously," no customer in California will be compelled to

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[130] *Id., citing, inter alia, Talley v. California*, 362 U.S. 60, 64 (1960); *Pacific Gas & Elec. Co. v. Pub. Util. Comm'n of California*, 475 U.S. 1, 10-11 (1987); *Harper & Row v. Nation Enterprises*, 471 U.S. 524, 559 (1985).

[131] *McIntyre*, 63 USLW at 4283.

[132] *Talley v. California*, 362 U.S. 60.

disclose his or her telephone number. Our decision fully allows all California residents, consistent with California policy, to block passage of CPN by choosing either per call or per line blocking. All that is necessary is that the customer make the decision to do so. California asserts that, despite its extensive education requirements, thirty percent of customers will not understand how to block passage of CPN. The study cited by California, however, was conducted in the context of telephone service generally. In the case of caller ID, however, customers with unlisted and nonpublished numbers have already demonstrated such an interest in the privacy of their telephone numbers that we find it implausible that nearly one-third of them would ignore, or not understand, repeated bill inserts, and the other educational requirements that California has imposed.[133] In fact, California asserts that customers with nonpublished numbers are three times more likely than average to purchase caller ID services,[134] which suggests that these customers are more aware of such services than the average subscriber, and thus are more likely to understand the accompanying blocking features. Thus, California's factual assertions are speculative. We do not believe that the preemption of California's per-line blocking default would "compel" unwanted disclosure of telephone numbers.

92. Moreover, as we discuss in Section IV B, *infra*, carriers are responsible for conducting effective education programs. There is no evidence in the record that these

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[133] Carriers in California must, among other things, provide notification in multiple languages, use bill inserts, white pages, brochures and advertising, and conduct ongoing customer awareness surveys. CPUC Order (A-90-11-011, p. 48).

[134] California *Ex Parte* Letter, April 27, 1995 at 3.

programs, which to date generally have been organized under state guidelines or requirements, have not been effective. California has considerable discretion to assure that its education programs, address unique situations in that state.

93. As for the California cases cited by the PUC, and the PUC's own conclusions in its decision on caller ID services offered in California, to the extent that the California constitution does, indeed, require a per line default blocking option for customers with unlisted or nonpublished numbers, we nevertheless find it necessary to preempt such regulation for the reasons stated above.[135] Under the circumstances here, we find authority to preempt the state constitution, in addition to the regulations of the PUC, where necessary. We deny California's request that application of our rules in California be stayed pending the opportunity for court review.

94. On a related matter, Pacific also suggests that we preempt the offering of free per line blocking because it thwarts our federal policy of promoting passage of CPN. Based on the record, we do not find it necessary to preempt state policies that require or permit free per line blocking at this time. The cost of providing per line blocking appears to be small for carriers having call set up capability, and we believe that the interstate portion of these costs would be *de minimis*. Given that we have required free per call blocking and we have modified our privacy mechanism to accommodate states that have per line blocking, permitting per line blocking without a charge appears consistent with our policies. One of our goals here is to preempt the states as

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[135] Pacific disputes California's allegation that the CPUC found the California State Constitution requires a default per line blocking option. Pacific *Ex Parte* Letter, April 27, 1995 at 2.

minimally as possible, and allowing states to prohibit charging for a privacy mechanism that our rules now permit does not rise to a level of intrusion on our policies that could require preemption.

95. Our finding that it is not feasible to have separate federal and state blocking policies also requires that we preempt state policies that offer no blocking options to callers. We preempt state requirements that per call blocking be implemented by a means other than *67 or that per call unblocking be implemented by a means other than *82. We have tried to make our preemption of state policies as narrow as possible. Our preemption here is consistent with our earlier preemption of state policies that: (1) prohibit the offering of interstate CPN-based service; (2) require blocking alternatives on interstate calls different from those adopted by the Commission; and (3) require blocking systems that interfere with the use of *67 to achieve blocking on interstate calls.

C. Application of Caller ID Rules

i. Wireless Services

96. *Background.* In the *Report and Order* the Commission did not exempt cellular carriers from the requirement that carriers capable of passing CPN must do so. NYNEX commented at that time that technical standards for transmission of CPN between cellular and landline carriers still were being developed.[136]

97. *Positions of the Parties.* Parties petition the Commission to clarify that its caller ID rules apply to all wireless

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[136] Report and Order at para. 15.

carriers.[137] SWBT argues that federal rules must include private mobile service providers, not just cellular carriers, to ensure availability of nationwide caller ID service.[138] The U.S. Coast Guard asks whether the rules apply to satellite communications provided by INMARSAT and AMSC.[139]

98. Commenters generally support the view that caller ID rules should apply to all wireless carriers.[140] While SWBT does not dispute that FCC rules apply to wireless carriers, it says that its cellular switches cannot currently pass CPN because they lack necessary software that only its switch vendors can provide. SWBT expects delivery of that software before April 1995, but cautions that this is not a certainty.

99. Wireless services providers further request clarification of the scope of our blocking requirements for their services.[141] Nextel urges the Commission to preempt state regulation to the extent it interferes with federal rules intended to create a uniform framework for wireless delivery of caller ID.[142] Nextel says that as a nationwide wireless communications service provider, it cannot efficiently operate its systems within a framework of fifty potentially different and conflicting regulatory schemes. SWBT seeks federal preemption of all state laws that regulate caller ID service

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[137] *See, e.g.*, SWBT Petition at 9; United States Coast Guard Petition at 1.

[138] SWBT Petition at 9; *see also* Nextel Petition at 3; McCaw Petition at 5.

[139] United States Coast Guard Petition at 1.

[140] *See, e.g.*, Bell Atlantic Comments at 4.

[141] *See, e.g.*, United States Coast Guard Petition at 1; SWBT Petition at 9.

[142] Nextel Petition at 6.

provided by cellular and PCS services, claiming that these systems cross state boundaries and may not "know" which blocking method – state or federal – to employ.[143]

100. *Discussion.* We clarify that our CPN rules apply to all common carriers, both wireline and wireless. It is only through free passage of CPN across all types of interconnecting interstate common carrier networks that the advantages of CPN-based services will be fully realized. Consistent with the Commission's determination that private mobile radio service providers are not subject to common carrier regulation, we do not apply our rules to these service providers. The rules do apply to all Commercial Mobile Radio Services (CMRS) and other wireless common carriers.[144] By applying the same rules to CMRS and wireline carriers, we intend to remove the regulatory uncertainty that appears to have impeded the development of interstate CPN-based services.

101. Commenters have not urged us to treat wireless carrier services differently from wireline services, although the interests of wireless users may be different from the interests of wireline users.[145] For example, cellular customers

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[143] SWBT Petition at 11. SWBT points out that cellular service areas extend across state boundaries.

[144] CMRS is defined as "any mobile service . . . that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public. . . . " The term "interconnected service" means "service that is interconnected with the public switched network. . . . " Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, Title VI, § 6002(b)(3)(B), 107 Stat. 312, 392 (1993); *see also*, Section 20.3 of the Commission's Rules, 47 C.F.R. § 20.3.

[145] The benefits of caller ID for CMRS customers are more complicated. For example, in order for a CMRS customer to be able to

may have more incentive than wireline customers to block delivery of their CPN and thus a greater need for a simple uniform blocking policy.[146] Without uniform treatment of carrier networks, a myriad of differing state and federal rules would create technical, operational and administrative problems for carriers that would delay development of CPN-based services. Moreover, we expect that the straightforward approach of applying the same rules to wireline and CMRS should reduce customer confusion. Finally, because development of CMRS SS7-based services has only begun, we anticipate that the articulation of a single rule will allow CMRS and equipment providers to plan their deployment of those services. For those CMRS carriers that are technically unable to pass CPN, there is no requirement that they do so. We recognize that investment in cellular networks' SS7 technology is occurring in stages and differs from network to network. A carrier's ability to transmit and receive CPN will depend upon the level of SS7 deployment within its network, the specific methods of interconnection, and type of software loaded into various switches. We require that CMRS providers comply with caller ID requirements with respect to roaming

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view the number of the incoming call, the customer must possess a phone with digital capabilities. Today most cellular customers possess cellular phones that use analog technology that cannot display the caller ID information.

[146] For example, cellular customers are usually billed for airtime charges on incoming calls. As such, cellular telephone users generally make their numbers available only to a limited number of people. This is an attempt to reduce the number of calls to their cellular number for which they would not want to pay. Thus, it is likely that cellular callers would be inclined to dial *67 and block delivery of their number to reduce the widespread distribution of their number.

customers to the extent that it is technically and economically feasible to do so.[147]

ii. Public Payphones, Hotel/Motel Services and Partylines

102. *Positions of the Parties.* Public payphone providers request that the Commission clarify whether privacy requirements for interstate calls apply to payphones. According to GTE, developing and installing the capability to meet such requirements will require costly network modifications.[148] Pacific estimates that it would need several years to bring less than one percent of its payphones into compliance.[149] Nevada Bell argues that blocking from payphones is

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[147] Roaming describes the situation which occurs when the subscriber of one CMRS provider enters the service area of another CMRS provider with whom the subscriber has no preexisting service or financial relationship and attempts either to continue an in-progress call, to receive an in-coming call or to place an out-going call. *Interconnection and Resale Obligations Pertaining to CMRS,* CC Docket No. 94-54, Second Notice of Proposed RuleMaking, FCC 95-149 (released April 20, 1995) at para. 45. CMRS providers providing service to a roaming customer from a different state are not subject to the per line blocking requirements of the roaming customer's home state. CMRS providers, however, are required to notify their customers that blocking requirements may differ when the customer is roaming outside the customer's home state.

[148] GTE Comments at iv, 24.

[149] Pacific Petition at 7. Pacific indicates that less than one percent of its pay telephones is served by switches that will not recognize *67 as the blocking indicator. Pacific plans to replace these switches by 1998 and seeks a waiver of the *67 rules for payphones served by these switches until that time. It indicates that in the absence of a waiver it will have to upgrade these switches, and finds little justification in the upgrade costs since the switches will soon be replaced.

inconsistent with state regulation.[150] According to BellSouth, the privacy interests of those using payphones is not compromised by delivery of CPN because it cannot identify the calling party by geographic location.[151]

103. By contrast, SAGE and SOAR strongly support per line blocking for public telephones located at shelters and domestic violence agencies.[152] Shelters, it says, cannot adequately monitor the use of public telephones and without per line blocking, a resident or young child might unknowingly make an unblocked call to an abuser, endangering shelter staff and residents.

104. *Discussion.* As we have stated throughout this proceeding, passage of CPN can create risks to calling parties in circumstances where they wish to prevent their numbers from being revealed. We have crafted our federal policy to recognize the privacy right of the called party to know who is calling, while at the same time enabling the calling party to conceal the telephone number from which he is calling. Having one rule governing as many categories of subscriber loop as possible minimizes customer confusion.

105. A number of LECs argue that we should not extend a per call blocking requirement to payphones, telephones in hotels or motels, or those connected to partylines.

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[150] Nevada Bell Petition at 6-7; *see also* SWBT Petition at 7 (adding that providing blocking at payphones is inconsistent with the wishes of law enforcement officials).

[151] BellSouth Petition at 5.

[152] SAGE and SOAR Petition at 10.

BellSouth argues, for example, that whatever general "societal expectation" of privacy our rules are designed to accommodate should not extend to payphone users because delivery of their station telephone number cannot identify them. We cannot agree with the fundamental premise that these telephone users have significantly different privacy expectations than users of other services.

106. As SAGE and SOAR make clear, the effect of disclosure of any type of identifying information in certain circumstances can result not only in serious threats to the calling party's security, but also can escalate into issues of life-threatening proportion.[153] For example, an abused woman may be in hiding from her abuser, but might still need to contact him to coordinate child support and visitation issues or to discuss legal separation or divorce matters.[154] If she makes a call from an unblocked public telephone in a shelter or from a motel where she is hiding, or from the partyline of a friend, the abuser may be able to discern her approximate location. An abuser may learn her approximate location by recognizing the area code or the first three digits of the local number or by returning a call to the location. Although the record in this proceeding is limited regarding the scope of risks, we cannot agree that callers using payphones, hotel or motel lines or partylines do not have privacy interests that should be respected in the federal policy.

107. We are aware that meeting federal privacy requirements for partylines and some payphones will require a financial outlay by carriers. We expect, however, that they will

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[153] SAGE and SOAR Comments at 4.

[154] *Id.* at 9-10.

recover these costs from ratepayers. Moreover, carriers have not shown why the reasonable privacy expectations of those placing calls from payphones, hotel and motel lines, or party-lines should not receive the same protection as residential telephone users receive. We find, moreover, that in some circumstances, at least, users of these services may need more protection. The public health and safety concerns raised by SAGE and SOAR compel the requirement we now impose.

108. We will give carriers until January 1, 1997 to provide per call blocking and per line unblocking capability to public payphones and to partyline telephones. It appears that most public payphones already support per call blocking and that a per line unblocking capability can be readily deployed.[155] This compliance date offers a reasonable time for carriers to make necessary upgrades. Although callers from these payphones will be at some risk of inadvertently revealing their calling number until upgrades are completed, invoking *67 on these phones will result in a fast busy signal to the caller. Callers will receive at least some notice from this signal that privacy is not being provided on the call. Similarly, BellSouth notes it is phasing out partyline service. Partyline callers also receive a fast busy signal if *67 is dialed. Again, setting the compliance date to January 1, 1997, appears to give sufficient time for carriers to bring partyline

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[155] Cincinnati Bell Comments at 2 (Cincinnati Bell currently has per call privacy option at public pay telephones served by DMS 10 and 1AESS central offices, which do not require separate software purchases to provide per call blocking for public payphones. With 5ESS switches, however, per call blocking at public payphones would require purchase of a separate switch feature, which CBT does not currently have.); *See also* Pacific Petition at 7 (less than one percent of its payphones are served by switches that do not recognize *67 as a blocking request).

customers the same capabilities available to other callers if their CPN can be passed on an interstate call. There is no evidence in the record that hotel or motel telephones present unique problems. Absent such evidence, we make them subject to our general rule, with the PBX exception discussed below.

iii. Emergency Services

109. *Background.* The Commission established several limited exceptions to the requirement that carriers honor privacy requests. It concluded that caller ID services used solely in connection with legally authorized call tracing and trapping procedures did not need to honor privacy requests a customer made by dialing *67. The Commission also found that while blocking mechanisms do not stop passage of the calling party's number for Enhanced 911 services based on ANI technology, such mechanisms could jeopardize other emergency services that instead rely on SS7 caller ID services.[156] The Commission concluded that to the extent that CPN-based services are used to deliver emergency services, federal privacy requirements should not apply to delivery of CPN to a public agency's emergency line, a poison control line, or in conjunction with 911 emergency services.[157]

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[156] Report and Order at para. 37. Enhanced 911 (E911) may provide the telephone number and address of the location where the E911 call originated to the Public Safety Answering Point, or PSAP attendant. Currently, ANI is used most often to provide the telephone number and to facilitate accessing a data base to retrieve the caller's location, but CPN may be used in the future.

[157] 47 C.F.R. § 64.1601(d); Report and Order at para. 37.

110. *Positions of Parties.* Several parties ask the Commission to reconsider its ruling that by dialing *67 customers should not be able to block CPN's delivery to a public agency's emergency line, a poison control line, or in conjunction with 911 emergency services. Carriers state that current blocking technology does not allow them to identify an emergency service provider so that they can ignore the privacy indicator.[158] Parties generally agree that because E911 services that permit 911 service providers to determine the location of the caller generally rely on ANI and not CPN, location service is not jeopardized. They state, however, that developing a capability on a public agency's emergency service line or poison control line that would ignore or overrule a blocking instruction would require software development. Others argue that public safety questions such as this should be left to state policies.[159]

111. *Discussion.* The rule adopted in Section 64.1601 requires that whenever CPN is delivered on a call, and the calling party has dialed *67 on that call, carriers must act in accordance with the customer's privacy request.[160] Exceptions were established for calls within private networks, calls to emergency lines, or in connection with authorized law enforcement trap and trace activity. In other words, a request for privacy on these calls would not necessarily be honored. We believe that whether calls to emergency lines receive confidentiality is a public safety question that is best left to

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[158] *See, e.g.,* Bell Atlantic Petition at 1; US WEST Petition at 3; Nevada Bell Petition at 3.

[159] *See, e.g.,* NARUC Petition at 13; NASUCA Petition at 12; NYPDS Petition at 7.

[160] 47 C.F.R. § 64.1601.

state and local government authorities. Consequently, we will continue to exempt calls to emergency lines from the general federal requirement that carriers must respect a caller's request that his calling party number not be revealed.

D. ANI and Caller Privacy

112. *Background.* The *Report and Order* recognized that IXCs were making calling parties' charge numbers available to subscribers of 800 and 900 services. SS7 delivers both CPN and charge number, which carries ANI information. Instead of requiring IXCs to honor privacy requests relating to CPN for ANI services, the Commission adopted controls on the use subscribers could make of the information they obtained from these services. The Commission stated that carrier tariffs or contracts offering these services generally must require that ANI customers not reuse information without the permission of calling parties. ANI customers could reuse the information to offer products or services directly related to the original call.

113. *Positions of Parties.* CPSR argues that SS7 provides the calling party the ability to designate a preference for privacy. It argues that IXCs should not be free to ignore these requests.[161] Nevada contends that the Commission should prohibit the use of ANI information for any marketing unless customer consent has been obtained.[162] AT&T states CPN is not, and may never be, ubiquitously available. It believes ANI services have contributed to efficiency and productivity, and

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[161] *See* CPSR Comments at 1 and 9.

[162] *See* Nevada Comments at 3-4.

that the Commission's rules strike the correct balance.[163] IIA opposes the request of Nevada and others that the "directly-related" limitation on subsequent marketing be narrowly defined.[164]

114. *Discussion.* The parties have not persuaded us to modify our rules regarding ANI services. ANI information may not be reused or resold for other purposes without a caller's consent, even where the called party has paid for the call. The called party is limited to using the information only to market services directly related to the subjects of the calls from which the ANI was obtained. The burden in any complaint proceeding will be on the marketer using ANI information to establish that the newly offered product is directly related to prior transactions. The customer can request not to be called in the future, and the ANI service provider must honor that request.[165] This approach protects the interests of all parties.

IV. THIRD NOTICE OF PROPOSED RULEMAKING

A. Private Branch Exchange Systems

115. *Background.* Private Branch Exchange (PBX) systems are customer-owned equipment that act as switches for telephones connected to them. The telephones connected to the PBX do not connect directly to telephone company facilities. Rather, they are connected to those facilities through the PBX. The *Report and Order* did not separately address PBX systems, but it did exempt CPN delivery services within a

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[163] *See* AT&T Comments at 16-20.

[164] IIA Comments at 3.

[165] 47 C.F.R. § 64.1200.

private network from the CPN policies adopted in the Order.[166] It concluded that the privacy expectations of the calling party are different when the individual is placing calls terminating within a single private network.[167]

116. *Positions of the Parties.* Northern Telecom states that its PBX equipment cannot currently provide per call blocking with a *67 "privacy flag" and that reprogramming to accomplish this would be costly.[168] It maintains that business services should not be subject to the same privacy requirements as residential services because of differing privacy expectations, and at the very least, existing PBX sets should be exempted from such requirements through a "grandfathering" provision.

117. *Discussion.* To this point this proceeding has dealt with the obligations being imposed on carriers providing interstate services. If PBX equipment can pass CPN to the public switched network, but does not enable callers using telephones connected to the PBX to indicate a privacy request to switches in the public network, we believe it creates risks to calling parties that need to be addressed in this proceeding. As is the case with partyline and payphone users, we reject the argument that parties making calls through PBX equipment have no privacy expectations or requirements. PBX systems are installed in many different settings, including shelters for abused persons. PBX systems not capable of activating the privacy indicator with *67 apparently return a

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[166] 47 C.F.R. § 64.1601(d).

[167] Report and Order at para. 36.

[168] *See* Northern Telecom Petition at 3. A caller from a telephone linked to one of its PBXs, it says, will hear a "fast busy" tone if *67 is dialed.

fast busy signal to the caller. Although risks to safety in these circumstances are somewhat attenuated, we believe PBX systems should enable callers using them to place a call passing through the public switched network to conceal their calling number by dialing *67. Similarly, we believe that parties should be able to pass their CPN from lines that have been blocked should they choose by dialing *82.

118. We therefore issue a separate Notice of Proposed Rulemaking proposing that PBX systems capable of delivering CPN to the public switched telephone network also be capable of: (1) delivering a privacy indicator when the user of a telephone served by the PBX dials *67, and (2) unblocking the transmission of their CPN when the user dials *82. We ask parties commenting on this issue to provide a full record upon which to base a reasonable timeframe to bring PBX systems into compliance. At a minimum, we ask that they answer the following questions: Approximately what percentage of deployed PBXs are capable of supporting the *67 blocking code and *82 unblocking code; What percentage are not? Approximately how many lines are served by the respective systems? What are the costs of retrofitting deployed PBXs? What are the costs of conforming new, not yet manufactured, equipment? What timeframe should be established for retrofitting deployed equipment? What timeframe should be established for conforming newly-manufactured equipment? Who should bear the costs of retrofitting deployed equipment? What public policy reasons would justify not requiring deployed equipment to conform? If newly manufactured or deployed equipment does not conform, should it be labeled to inform users of its deficiencies? What are the costs and benefits of requiring labeling?

B. Private Payphones

119. *Background.* Commenting parties do not generally address the impact of federal privacy rules on private payphones. Nevertheless, we are concerned, as with PBX equipment – both PBX and private payphones are CPE – that if private payphones pass CPN to the public switched network, but do not enable callers to indicate a privacy request to switches in the public network, risks are created to calling parties that need to be addressed in this proceeding. In addition, we are concerned that retrofitting operating and already manufactured private payphones to comply with federal caller ID rules may pose unique and costly problems. Private payphones, unlike public payphones, may not be capable of supporting blocking and unblocking through "universal" changes at the central office. Instead, such changes may need to be made "payphone by payphone" because all relevant circuitry is contained in individual telephone instruments. The costs for such retrofitting could be high.

120. *Discussion.* On the basis of the current record, we cannot accurately address the overall impact of requiring blocking and unblocking from private payphones. To address these issues, we propose that private payphones be subject to our caller ID privacy rules and ask commenters to address the questions that we pose above in connection with PBX systems capable of delivering CPN to the public switched network and any others they consider relevant to our making an informed decision that some or all private payphones should be capable of supporting blocking and unblocking.

IV. SECOND REPORT AND ORDER

A. Application of Caller ID Rules to Other CPN-Based Services

121. *Background.* In the *Report and Order,* the Commission tentatively concluded that its policies and rules governing delivery of calling party number should also apply to services delivering calling party name.[169] It sought comment on this tentative conclusion and further sought comment on whether its privacy policies should extend to other services, such as those that permit subscribers automatically to return calls.[170]

122. *Positions of Parties.* Most commenters support application of a uniform privacy policy to govern delivery of both calling party name and number.[171] They argue that the same privacy considerations apply to each, and that using different blocking schemes to protect privacy would only confuse customers and increase carriers' costs.[172] Currently, they say, carriers offer the same blocking options for both services.

123. COCC recommends that while a uniform policy should govern each, the applicable policy should be that of the states, not the Commission.[173] PRC disagrees that there

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[169] Report and Order at para. 50.

[170] *Id.*

[171] *See, e.g.,* Ad Hoc Telecommunications User Group FNPRM Comments at 3; Pacific FNPRM Comments at 3; Sprint FNPRM Comments at 3; SWBT FNPRM Reply at 5; AT&T FNPRM Reply at 5.

[172] *See, e.g.,* US WEST FNPRM Comments at 2; SWBT FNPRM Reply at 1.

[173] COCC FNPRM Reply at 4.

should be a uniform policy, arguing that the potential for abuse is greater when a party's name is delivered.[174] ITAA opposes privacy protection for calling party name, which, it says, is a competitive enhanced service and should not be subject to regulation.[175]

124. Commenters generally argue that privacy rules should apply to call return services but disagree on what those rules should be.[176] COCC argues that when a calling party blocks passage of CPN, a called party attempting to use a call return service should not be allowed to return that call.[177] Ad Hoc states that callers should be able to block automatic return call features on the same basis as they can block the CPN of the original call under our caller ID rules.[178] COCC reports that US WEST offers call return services within Colorado and that a Colorado PUC order requires that such services be configured so as not to return calls on which callers have blocked their calling party number.[179]

125. Others urge that called parties should be able to return calls using call return services, regardless of the privacy indicator. According to Bell Atlantic, privacy concerns about call return service that CPN marked private will be

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[174] PRC FNPRM Comments at 6.

[175] ITAA FNPRM Comments at 6.

[176] *See, e.g.*, Ad Hoc FNPRM Comments at 5; BellSouth FNPRM Comments at 5; COCC FNPRM Comments at 3. *But see* US WEST FNPRM Reply at ii (stating that the Commission should not prescribe any particular privacy treatment with respect to auto call return).

[177] COCC FNPRM Comments at 3.

[178] Ad Hoc FNPRM Comments at 5.

[179] COCC FNPRM Comments at 3.

inadvertently disclosed are misplaced.[180] It says that it has been successfully offering the service for years in areas that permit caller ID blocking.

126. On the issue of masking the number of the original calling party when a call return service is invoked, carriers are divided. US WEST maintains that when a charge is incurred for a call returned using the service, no party's privacy is violated if the bill presented to the party who must pay for the call being returned reveals the number reached when "Call Return" is used.[181] Sprint says that suppressing billing information will create customer service problems and will require additional software to implement.[182] By contrast, Bell Atlantic says that it does not currently provide blocked number information on bills.[183] With respect to all other CPN-based services, most commenters argue that federal CPN privacy policy should apply.[184]

127. *Discussion*. We conclude that when callers request that their number not be revealed to the terminating called party on an interstate call, it is reasonable to treat their calling name similarly. Thus, we require carriers not to reveal calling party name whenever a caller requests that calling party number not be revealed. Revealing the name of the person who subscribed to the line from which a call is made is no different, in principle, from revealing that party's telephone

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[180] Bell Atlantic FNPRM Comments at 2.

[181] US WEST FNPRM Reply at 6.

[182] *See* Sprint FNPRM Comments at 5-6.

[183] Bell Atlantic FNPRM Reply at 2.

[184] *See, e.g.*, Ad Hoc FNPRM Comments at 4; AT&T FNPRM Reply at 5; Rochester Telephone FNPRM Comments at 2; Roseville Telephone FNPRM Reply at 5.

number. Accordingly, when calling parties impose a block on the delivery of their calling party number, we require that calling name, as well as calling number be blocked.

128. Such regulatory treatment is consistent with the current LEC practices. Either both pieces of information are delivered or both are blocked. The single exception is with respect to BellSouth in Tennessee. In Tennessee, when privacy is indicated, the calling party number is not delivered, but the calling name is.[185] For the reasons we describe in Section III, *supra*, it is not technically and economically feasible to have a different state and federal privacy regime operating on the same line in connection with a CPN-based service that varies as a function of the jurisdictional nature of the call. We must therefore preempt Tennessee's privacy policy as it relates to calling name delivery on calls in which callers have invoked privacy on delivery of their calling party number. If our rules governing carriers' obligations to conceal calling name and number were different, we believe the result would be unnecessary expense for carriers and increased confusion for customers. Given our finding that different federal and state blocking policies are not feasible, our preemption here is consistent with our earlier preemption[186] of state policies that require blocking alternatives on interstate calls different from those adopted by the Commission, and of state policies that require blocking systems that interfere with the use of *67 to achieve blocking on interstate calls.

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[185] BellSouth FNPRM Comments at 5 n. 5. BellSouth states that in Tennessee, the Public Service Commission has required BellSouth to deliver the calling party's name to the called party, even if the caller has blocked delivery of the telephone number.

[186] Report and Order at para. 69.

129. While we apply the same privacy rules to calling name and calling number, we do not believe that the same rules governing CPN transport should apply to calling name transport. Therefore, at this time we do not require that carriers pass calling party name to interconnected carriers without charge. Although the record is limited on this matter, we reach this conclusion, in part, because the mechanisms associated with the generation and delivery of calling party name and number are substantially different. The record indicates that while calling party number is routinely included in the SS7 Initial Address Message, calling party name is not.

130. Specifically, the record indicates that the costs associated with transport of the name parameter may not be *de minimis*. In contrast to caller ID service, which requires only the transmission of calling party number, to retrieve calling party name requires additional LEC/IXC interconnection and data base capabilities.[187] In order for a LEC to provide calling party name service, the calling party number must be routed to a centralized data base in which that number is associated with a calling party name. This query and information delivery requires a specific TCAP/SS7 message. After the association is made, delivery of the name is made to the terminating location.

131. Finally, while calling name service is currently offered only by a terminating LEC accessing a LEC data base, we expect that technological developments will take place, particularly in connection with increasing customer access to network functionality that may enable providers other than the LECs to offer this service. We do not wish to hamper

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[187] *See, e.g.*, Sprint FNPRM Comments at 2.

creation of competitive data bases by imposing rules regarding transport of calling name. The enhanced or basic nature of services depending on CPN was not specifically addressed in the *Further Notice*, and the comments on this point are limited. On the basis of the record before us, however, and for purposes of this proceeding, we agree with Ameritech that because calling name delivery merely provides normal telephone company record information to help the called party customer identify the calling party before answering the call, it can be considered adjunct to basic service.[188]

132. With respect to automatic call return service, we find that callers requesting that their number not be revealed should be able to block the automatic return call feature. Without this requirement, a party can use an automatic return call service to glean essential information about the calling party that the calling party wishes not to reveal. This is inconsistent with the basic tenet of our caller ID rules – that callers be allowed to keep their telephone numbers private if they choose.

133. Allowing calling parties to block automatic call return also meets the needs of special groups to prevent their telephone numbers from being revealed without their consent. For example, a victim of domestic violence staying with a friend could call home to speak with her children and even

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[188] Carriers offer basic transmission services directly to their customers as part of their common carrier service. Services based on CPN, such as calling name and call return, may be offered as common carrier services if they facilitate the customer's use of the basic transmission channel. *See, e.g., NATA Centrex Order*, 101 FCC 2d 349, 361 (1985); *North American Telecommunications Association*, 3 FCC Rcd 4385 (1988).

though she took care to block her calling party number, an abusing spouse could learn of her location by using automatic call return. The abusing spouse would not need her phone number or address, he would need only recognize the voice of the person answering the phone.

134. We believe that our privacy requirements will not unreasonably burden carriers. While we recognize that some carriers are currently offering call return service that does not enable callers to block return calls, industry standards do not require this particular configuration of the service. As the experience of other carriers currently offering call return service makes clear, the service can be offered in such a way that the caller's privacy wishes are honored. We require carriers to arrange their call return services in such a manner that callers requesting that their number not be revealed also be able to block an automatic return call feature.

B. Educational Requirements

135. *Background.* In the Further Notice, the Commission required that any common carrier participating in the offering of services providing calling party number, ANI, or charge number on interstate calls must notify its subscribers, individually or in conjunction with other carriers, that their numbers may be revealed to called parties. Notice had to be made by April 12, 1995, and such times thereafter as required to ensure notice to subscribers. Notification had to inform subscribers how to maintain privacy (i.e., by dialing *67 or 1167). For ANI services, notice had to inform subscribers of the restrictions on the reuse or sale of subscriber information.[189]

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[189] 47 C.F.R. § 64.1603.

136. *Positions of the Parties.* Several parties argue that if the Commission defers to blocking choices made by the various states, very little additional education is required. Calling parties will know the same arrangements govern interstate calls that govern intrastate calls.[190] California argues that education should be done without any marketing activity, and that carriers should be held to specific public awareness goals that can be measured.[191] Colorado urges the Commission to leave the specific requirements for education to the state commissions. Georgia Consumer Utilities Council urges the Commission to establish detailed guidelines defining the form education should take.[192] The Privacy Rights Clearinghouse urges that "privacy rights impact statements" be prepared and provided to consumers before new CPN-based services are introduced.[193]

137. A number of parties offer specific recommendations for education programs. Consumer Action urges that education be offered in a variety of languages, especially Chinese, English, Korean, Spanish and Vietnamese.[194] It recommends that the Commission require carriers to establish an independent research firm to evaluate whether eighty-five percent of low income and limited English speakers are adequately informed. TURN argues any education program must

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[190] *See* Colorado FNPRM Comments at 1; TURN FNPRM Comments at 2. (TURN states that if the Commission does not defer to state policies, extensive reeducation will be necessary. TURN FNPRM Comments at 6.)

[191] *See* California Petition at 2-3.

[192] GCUC FNPRM Comments at 3.

[193] PRC FNPRM Comments at 7.

[194] Consumer Action FNPRM Comments at 4.

be multifaceted and multilingual. It recommends notices in newspapers and announcements on radio and television, noting that not all consumers can read bill inserts.[195] It recommends that final details of any information program be left to state commissions. AT&T believes that the Commission should actively participate in the creation and coordination of customer educational materials. It recommends that the Commission convene an industry panel to develop an educational message.[196] Roseville Telephone Company supports the proposal, provided telephone companies are given the flexibility for tailoring individual messages.[197] GTE believes it would be impossible for the Commission, or any joint industry effort, to craft a uniform message that could be used in all states without confusing some subscribers.[198] Pacific rejects AT&T's call for an industry panel, but believes AT&T should share the costs of customer education with LECs. It notes IXCs benefit from passage of ANI. It says it has had experience working with IXCs to develop educational programs for 900 services, and has no objection to helping IXCs educate consumers through bill inserts or other means.[199]

138. US WEST argues there is no evidence that education campaigns already conducted, usually incorporating suggestions from state commissions and consumer advocacy groups, are deficient in scope or content.[200] It says the Commission should accord carriers substantial leeway in the

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[195] TURN FNPRM Comments at 7.

[196] AT&T FNPRM Reply at 1.

[197] Roseville Telephone Company FNPRM Comments at 4.

[198] GTE FNPRM Reply at 2.

[199] Pacific FNPRM Reply at 6.

[200] US WEST FNPRM Reply at iii.

specifics of how they speak to their customers. NECA believes the current rules satisfactorily address concerns about consumer education regarding CPN services and privacy mechanisms.[201] It argues the Commission does not usually provide detailed instruction on the form or substance of education.[202] USTA believes the current rules give a carrier the flexibility to provide notice to customers in the most effective manner given the carrier's situation.[203] Pacific argues that California has established a notification program so burdensome that no local exchange carrier in California offers caller ID services. Pacific's affiliate, Nevada Bell, does offer the service in Nevada, where it receives fewer than ten informal complaints annually. It asks that the Commission not micromanage carrier education efforts.[204]

139. *Discussion.* We agree with those parties who argue that detailed, Commission-prescribed education requirements are not necessary. Many states require education, and it is appropriate to draw on the experience that state and carrier education efforts have developed. There is no evidence in the record that these efforts have not been effective. Section 64.1603 places the responsibility for ensuring notice to subscribers that their number may be revealed to a called party on the carriers participating in calling party number, ANI or charge number services.[205] We expect carriers will adjust

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[201] NECA FNPRM Comments at 3.

[202] *Id., citing Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information*, 8 FCC Rcd 8798, 8806-7 (1993).

[203] USTA FNPRM Comments at 4.

[204] Pacific FNPRM Reply at 4.

[205] 47 C.F.R. § 64.1603

their educational messages to meet local conditions to ensure notice is effective for all blocking options, and we believe education efforts developed at the state level will provide useful guidance to carriers as they address local conditions. The rule is clear that the obligation of providing adequate notice is a continuing one. Our complaint process provides a mechanism for assuring that carriers meet their obligations.

140. The *FNPRM* invited parties to provide joint education proposals. No specific proposals have been submitted. We again encourage carriers to work together to develop effective education materials and strategies. It is in their best interest to share information about effective and efficient strategies to meet their obligations under the rules. But the obligation to develop effective education programs remains with the carriers. Each carrier has the responsibility of demonstrating that whatever means it uses are effective to inform consumers of the risks to privacy and the mechanisms available to protect it. Specifically, callers must know that unless they dial *67, CPN may be passed, and unless they dial *82, CPN may not be passed. These efforts must be completed not later than December 1, 1995 by carriers participating in the offering of services providing calling party number, ANI, or charge number services.

V. Procedural Matters

A. Ex Parte

141. The Third Notice of Proposed Rulemaking is a non-restricted notice and comment rulemaking. *Ex Parte* presentations are permitted, except during the Sunshine Agenda

period, provided they are disclosed as provided in Commission rules.[206]

B. Final Regulatory Flexibility Analysis

142. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. § 601 *et. seq.*, the following final analysis has been prepared:

Need for and objective of the rules:

This Second Report and Order addresses comments filed in response to the *Further Notice* concerning application of federal caller ID rules to other CPN-based services and Commission-prescribed educational requirements to support consumer use of caller ID services. We apply the CPN privacy policy to other CPN-based services so that when CPN is marked private, it is neither revealed nor able to be used to contact the caller in keeping with the basic tenet of our caller ID rules that callers be allowed to keep their telephone numbers private if they choose. We do not apply CPN transport policy to other services because the costs of using the facilities that support other services may not be *de minimis*. We further find that more detailed, Commission prescribed education requirements are not necessary at this time because ongoing carrier efforts to educate their customers about CPN services, developed in many cases with state government participation appear to be effective.

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[206] *See generally*, 47 C.F.R. §§ 1.1202, 1.1203, and 1.1206(a).

Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis:

No comments were submitted in direct response to the Initial Regulatory Flexibility Analysis.

Significant alternatives considered:

The Further Notice requested comments on several issues. The Commission has considered all comments and has determined that its caller ID policies are best served by the requirement that CPN privacy policy apply so that when CPN is marked private, it is neither revealed nor able to be used to contact the caller. It does not apply the CPN transport policy to other services because the costs of using the facilities may not *de minimis*.

143. *Initial Regulatory Flexibility Act Analysis on the Third Notice of Proposed Rulemaking*

An Initial Regulatory Flexibility Analysis is contained in Appendix A.

C. Notice and Comment Provision

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. §§ 1.415 and 1.419, interested parties may file comments on or before June 30, 1995 and reply comments on or before July 28, 1995. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting documents with the reference number "CC Docket 91-281" on each document. Parties wanting each Commissioner to receive a personal copy of comments, should send comments and reply comments to the

Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street, N.W., Washington, DC. Copies of comments and reply comments are available through the Commission's duplicating contractor: International Transcription Service, Inc. (ITS, Inc.), 2100 M Street, N.W., Suite 140, Washington, DC 20037 (202/857-3800).

V. ORDERING CLAUSES

144. ACCORDINGLY, IT IS ORDERED, that pursuant to authority contained in Sections 1, 4(i), 4(j), 201-205 and 218 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 218, that the petitions for reconsideration and clarification of caller ID rules ARE GRANTED, except to the extent indicated otherwise herein.

145. IT IS FURTHER ORDERED that the decisions and policies adopted herein SHALL BE EFFECTIVE thirty days after the date of publication in the Federal Register.

146. IT IS FURTHER ORDERED, pursuant to Sections 1, 4(i) and (j), 201-205, 218 of the Communications Act as amended, 47 U.S.C. §§ 151, 154(i), 151(j), 201-205, and 218, that NOTICE IS HEREBY GIVEN of the proposed changes in policies regarding the application of caller ID rules to PBX systems and private payphones, and COMMENT IS INVITED on this proposal.

FEDERAL COMMUNICATIONS
COMMISSION
William F. Caton
Acting Secretary

SEPARATE STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

RE: Rules and Polices Regarding Calling Number Identification Service – Caller ID, Memorandum Opinion and Order On Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking (CC Docket No. 91-281)

In this *Memorandum Opinion and Order*, the Commission affirms its decision to maintain a federal Caller ID policy, and will require that common carriers, including Commercial Radio Service providers, with Signaling System 7 (SS7) call set up capability must transport a calling party number (CPN) without charge to interstate connecting carriers. The *Order* also clarifies that carriers that do not have SS7 call set up capability do not have to upgrade their networks just to transport CPN to connecting customers. The decision also revises the Caller ID rules in order to permit carriers to provide privacy on all calls dialed from a particular line, where state policies provide, and the customer affirmatively selects, that option. Callers dialing *67 before dialing a particular interstate call will block calling party information for any interstate calls, and those callers using a blocked line can unblock the line and release the information by dialing *82.

I supported the Commission's prior decision to adopt a federal policy allowing only per-call blocking because I believed it would balance the primary public policy considerations in this proceeding regarding how to facilitate the interstate transmission of CPN through services including caller ID while offering individuals an opportunity to protect their

privacy.[1] At that time, I stated that the Commission would need to monitor the extent that the implementation of these rules would effectively mitigate the confusion created by the varying state practices regarding the transmission of CPN and associated blocking procedures for intrastate calls. I also was interested in monitoring how states that were currently using per-line blocking for intrastate calls would accommodate *67 blocking capability.

I support this decision on reconsideration as a continuation of the purpose underlying the prior decision, which was to: (1) establish a minimally intrusive measure given the wide variety of state practices, and (2) manage the level of confusion for consumers most effectively as compared to alternative approaches. The reconsideration record in this proceeding indicates that the modifications to the rules in this decision are appropriate to balance the public's interest in terms of the benefits resulting from transmission of CPN, as well as the respective privacy interests of both called and calling parties. This action will take another step toward mitigating the confusion resulting from the variety of state practices, while accommodating the policies of most states, including those that have maintained some form of per-line blocking. The modified policies for *67 and *82 dialing for blocking and unblocking also will offer more simple and consistent practices for callers in different states. Furthermore, to the extent that consumer education programs will be

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[1] Rules and Policies Regarding Calling Number Identification Service – Caller ID, Report and Order and Further Notice of Proposed Rulemaking, 9 FCC Rcd 1764 (1994) (Separate Statement of Commissioner Andrew C. Barrett).

necessary to ensure that consumers may make the most effective and immediate use of the practices under the modified federal policy, states will have an opportunity to design such programs to suit their unique needs.